



California Regulatory Notice Register

REGISTER 2010, NO. 36-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

SEPTEMBER 3, 2010

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AMENDMENT

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Orange Cove Irrigation District
Valley Insurance Program

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002-931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$205.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. "Periodicals Postage Paid in Saint Paul, MN." **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Barclays, a subsidiary of West, a Thomson Reuters Business, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

ADOPTION

MULTI-COUNTY: Yuba-Sutter Economic
Development Corporation

AMENDMENT

MULTI-COUNTY: CA Fair Services Authority
Orange Cove Irrigation District
Valley Insurance Program

A written comment period has been established commencing on **September 3, 2010**, and closing on **October 18, 2010**. Written comments should be directed to the Fair Political Practices Commission, Attention **Cynthia Fisher**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government

Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **October 18, 2010**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code(s) and approve it as revised, or return the proposed code(s) for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Cynthia Fisher, Fair

Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODES**

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Cynthia Fisher**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. STATE PERSONNEL BOARD

**NOTICE OF PROPOSED CHANGES TO
TITLE 2, OF THE CALIFORNIA CODE OF
REGULATIONS, DIVISION 1, CHAPTER 1,
SUBCHAPTER 1, ARTICLE 8,
PSYCHOLOGICAL SCREENING, BY
THE STATE PERSONNEL BOARD**

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the State Personnel Board (Board) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal will be held on October 18, 2010, at 10:00 a.m. in Room 150, at 801 Capitol Mall, Sacramento, CA.

Following the public hearing, the Board may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be made available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Attention: John D. Smith

Comments may also be submitted by e-mail to: jsmith@spb.ca.gov. Comments must be submitted no later than 5:00 p.m. on October 18, 2010.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 18211, 18213, and 18701 of the Government Code, and to implement, interpret or make specific the following sections, the State Personnel Board is considering changes to Article 8, Examinations, of Division 1, of title 2 of the California Code of Regulations as set forth in the Informative Digest:

Government Code Sections: 1031(f)-(g), 18500, 18670, 18931, 18935. Penal Code: 13503, 13506, 23510, 23510.5, 13601(a).

SECTIONS AFFECTED

Amendment of sections: 172.6, 172.7, 172.8, 172.9, 172.10 (renumbered to 172.11), 172.11 (renumbered to 172.12).

Adoption of section: 172.10

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The State Personnel Board (Board) is a neutral body responsible for administering a merit system of civil service employment within California State Government. As part of its responsibility, the Board conducts psychological screening, which is the mandatory pre-employment assessment of the psychological fitness of candidates for appointment as peace officers including peace officers in either a youth or adult correctional facility.

Government Code section 18701 provides the Board with broad authority to “prescribe, amend, and repeal rules in accordance with the law for the administration and enforcement of this part and other sections of this code over which the Board is specifically assigned jurisdiction.”

Existing regulations that set forth the procedures for psychological screening as well as the appeal procedures for candidates withheld from certification are incomplete, confusing, and do not reflect a comprehensive regulatory scheme.

In this rulemaking, the Board has undertaken a review of the existing psychological screening regulations in order to provide a clear explanation of the screening process in order to ensure the process functions in a more orderly and expeditious manner.

The majority of changes to these regulations are either clarifying or non-substantive changes. However, the major improvement to this regulatory scheme is the

creation of a Dispute Resolution Process which sets forth a clear process for candidates who have been disqualified from consideration as a peace officer. The process allows candidates to obtain an evaluation from an outside professional, and sets forth all possible contingencies that may result from the recommendation of the outside professional.

The process also includes the right of a candidate to file an appeal with the Appeals Division of the Board in the event the candidate does not agree with the final recommendation of the Board's designee to withhold certification.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary costs or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

COSTS OR SAVINGS TO STATE AGENCIES

No additional costs or savings to state agencies are anticipated.

BUSINESS IMPACT/SMALL BUSINESS

The State Personnel Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610. The determination that the proposal would not affect small business is based upon the fact that the proposal applies only to the procedures of the State Personnel Board, employees of state agencies, or individuals applying to the State for jobs as peace officers.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The State Personnel Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of

jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The State Personnel Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS

None.

ALTERNATIVES

The State Personnel Board must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the adoption of these regulations are proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries concerning the proposed adoption of these regulations and written comments may be directed to:

John D. Smith
801 Capitol Mall
Sacramento, CA 95814
(916) 651-1041
jsmith@spb.ca.gov

or

Kathey Norton
801 Capitol Mall
Sacramento, CA 95814
(916) 651-3899
knorton@spb.ca.gov

INITIAL STATEMENT OF REASONS AND INFORMATION

The State Personnel Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons and all of the

information upon which the proposal is based, may be obtained upon request from the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. These documents may also be viewed and downloaded from the State Personnel Board's website under "What's New?" at: www.spb.ca.gov.

**AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS AND
RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person(s) named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above.

WEBSITE ACCESS

Materials regarding this proposal can be found at the State Personnel Board's website at: www.spb.ca.gov.

**TITLE 3. DEPARTMENT OF FOOD
AND AGRICULTURE**

Notice of Proposed Rulemaking

The Department of Food and Agriculture proposes to amend Section 3906 of the regulations in Title 3 of the California Code of Regulations pertaining to the assessment on sales of agricultural and/or vegetable seed.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to smccarthy@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on October 18, 2010. The Department will consider only

comments received at the Department offices by that time. Submit comments to:

Susan McCarthy
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
smccarthy@cdfa.ca.gov
916.654.1017
916.654.1018 (FAX)

AUTHORITY AND REFERENCE

Food and Agricultural Code Sections 407 and 52331 authorize the Department to adopt this regulation. The proposed revision is to a regulation that interprets and makes specific Sections 52331 and 52354 of the Food and Agricultural Code.

**INFORMATIVE DIGEST/PLAIN ENGLISH
OVERVIEW**

The specific purpose of Section 3906 is to establish the annual assessment rate per one-hundred dollars gross annual dollar volume sales of agricultural and/or vegetable seed for the preceding fiscal year, beginning July 1. The proposed amendment will set this fee at \$0.28/\$100 gross annual dollar volume sales of agricultural and/or vegetable seed for the fiscal year beginning July 1, 2010.

Food and Agricultural Code (FAC), Sections 52291–52298 provides for an eleven member Seed Advisory Board (Board) and establishes the composition, terms of office and duties of the Board. One of the duties is to recommend the dollar volume assessments on gross annual dollar volume sales of agricultural and/or vegetable seed. FAC, Section 52354 establishes that the assessment shall not exceed \$0.40/\$100 gross annual dollar volume sales of agricultural and/or vegetable seed.

FAC, Section 52354.5 establishes that the Board shall make a recommendation regarding the level of assessment to the director and that the director shall fix the annual assessment. During their May 12, 2010 meeting, the Board approved a motion to set the assessment rate at \$0.28/\$100 gross annual dollar volume sales of agricultural and/or vegetable seed for the fiscal year beginning July 1, 2010.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other nondiscretionary costs to or savings on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impact on a representative private person or businesses: There are 293 small firms that submit an average assessment payment of approximately \$4,100 per year. The proposed change in the assessment will change their payments by about \$944 each. There are 62 large firms having average sales of approximately \$5.8 million per year that pay about 3/4 of the total assessments. The proposed change in the assessment will change their payments by approximately \$16,000 each (about 0.3% of the firms' sales volume).

Amendment of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination

The Department has determined that the proposed regulations will affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Susan McCarthy
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
smccarthy@cdfa.ca.gov
916.654.1017
916.654.1018 (FAX)

In her absence, you may contact Stephen Brown at the same phone number.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all of the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons will be available upon request. Requests should be directed to the contact named above.

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. McCarthy at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may amend the proposed regulation substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulation as revised. Please send requests for copies of any modified regulations to the attention of Susan McCarthy at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT
OF REASONS**

Upon its completion, copies of the Final Statement of Reasons will be posted on the Department's web site or a copy may be obtained by contacting Ms. McCarthy at the address listed above.

**TITLE 3. DEPARTMENT OF FOOD
AND AGRICULTURE**

Notice of Proposed Rulemaking

The Department of Food and Agriculture proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to smccarthy@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on October 18, 2010. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Susan McCarthy
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street, Room 210
Sacramento, California 95814

AUTHORITY AND REFERENCE

The Department amended Section 3406(b) pursuant to the authority vested by Sections 401.5, 403, 407, 5301, 5302 and 5322 of the Food and Agricultural Code of California. The Department amended Section 3406(b) to implement, interpret and make specific Sec-

tions 5301, 5302 and 5322, Food and Agricultural Code.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate the pest (FAC Section 5761).

The proposed amendments of Section 3406(b) will remove the Escondido and Fallbrook areas of San Diego County and the Santa Monica area of Los Angeles County from the Mediterranean Fruit Fly Interior quarantine. The effect of the amendment will be to remove authority for the State to regulate movement of hosts and possible carriers of Mediterranean fruit fly within and from these areas.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.
Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Costs or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The estimated cost impact of the adopted regulation on a representative private person or business is not expected to be significantly adverse. A representative business could incur costs of approximately \$940.

These regulatory actions will not:

- (1) create or eliminate jobs within California;
- (2) create new business or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: none.

Small Business Determination

The Department has determined that the proposed regulations affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT

Inquiries concerning the proposed administrative action may be directed to:

Susan McCarthy
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street, Room 210
Sacramento, California 95814
916.654.1017
FAX 916.654.1018
smccarthy@cdfa.ca.gov

The backup contact person for these inquiries is:

Stephen Brown
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street, Room 210
Sacramento, California 95814
916.654.1017
FAX 916.654.1018
sbrown@cdfa.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. McCarthy at the above address.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS,
AND RULEMAKING FILE

The Department of Food and Agriculture will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the initial statement of reasons for the proposed action and the express terms of the proposed action. Copies may be obtained by contacting Susan McCarthy at the address or phone number listed above.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt, repeal and/or amend the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Susan McCarthy at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons will be posted on the Department's web site or a copy may be obtained by contacting Ms. McCarthy at the above address.

**TITLE 8. OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

**NOTICE OF PUBLIC MEETING/PUBLIC
HEARING/BUSINESS MEETING OF THE
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD AND NOTICE OF
PROPOSED CHANGES TO TITLE 8 OF THE
CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and

Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **October 21, 2010**, at 10:00 a.m.
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **October 21, 2010**, following the Public Meeting,
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS

MEETING: On **October 21, 2010**, following the Public Hearing,
in the Auditorium of the Harris State Building,
1515 Clay Street, Oakland, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language inter-

preter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND
HEALTH STANDARDS BOARD**

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders, as indicated below, at its Public Hearing on **October 21, 2010**.

1. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 7,
Article 116
Section 5291

Firing of Explosive Materials (Blasting Operations)

Descriptions of the proposed changes are as follows:

1. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 7,
Article 116
Section 5291

Firing of Explosive Materials (Blasting Operations)

**INFORMATIVE DIGEST OF PROPOSED
ACTION/POLICY STATEMENT OVERVIEW**

This proposal is based on an Occupational Safety and Health Appeals Board Decision After Reconsideration (DAR) in the Matter of J.F. Shea Construction, Inc., Docket No. 02-R5D3-80, dated November 2, 2007, regarding General Industry Safety Orders, Section 5291(b). Section 5291(b) prohibits firing blasts without a positive warning signal being given to workers and without definite assurance that all surplus explosives are in a safe place and that workers who could be injured by the blast are at a safe distance or under sufficient cover.

According to the DAR, the employer was cited by the Division of Occupational Safety and Health (Division) for alleged serious violation of Section 5291(b), in that seven employees were outside a tunnel and in the vicinity of its entrance when a blast was fired. The workers

stated that they had not been warned by the employer of the impending blast, and as a result, they neither evacuated the blast area to a safe location nor found safe cover as required by the standard. The citation was dismissed by the Administrative Law Judge because the required warnings were in fact given by the employer, and Section 5291(b) does not require that they be recognized by affected workers. The failure of workers to receive an audible warning signal and recognize that a blast is about to occur could result in a serious injury or fatality.

This proposal would aid affected blast site employees in recognizing the warning by requiring that the warning signal be given by a device such as an air horn, whistle, siren or other device that produces a signal loud enough to be effective and by prohibiting the blast from being fired until the on-site blaster accounts for surplus explosives, security personnel are in place, and all workers that could be affected by the blast are out of danger. The language pertaining to the warning signal is industry language as contained in Chapter 13 of the 17th Edition of the Blasters Handbook, by the International Society of Explosives Engineers.

This proposed rulemaking action also contains non-substantive reformatting of subsection (b) for clarity. These non-substantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

Section 5291. Firing of Explosive Materials (Blasting Operations)

This section contains requirements pertaining to the firing of explosive materials. The requirements include, but are not limited to, use of a licensed blaster, warning signals prior to blasting, precautions against unauthorized blasting area entry, warning signal methods, use of the "All Clear" signal, and the use of warning signs.

Amendments are proposed to subsection (b) to require the warning signal/procedure to be effective in warning workers prior to a blast and to prohibit blasts from being fired until the blaster-in-charge verifies that surplus explosives are at a safe location, that security personnel are in place, and that all personnel are either outside the blast area or under sufficient cover. Thus, the proposal would enhance the safety of employees who might be endangered by the blast.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires lo-

cal agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than October 15, 2010. The official record of the rule-making proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on October 21, 2010, will not be considered by the Board unless the Board announces an extension

of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED MINOR AMENDMENTS TO THE PERIODIC SMOKE INSPECTION PROGRAM IN RESPONSE TO THE INCLUSION OF DIESEL VEHICLES IN SMOG CHECK (ASSEMBLY BILL 1488, MENDOZA 2007)

The Air Resources Board (ARB or Board) will conduct a public meeting at the time and place noted below to consider minor amendments to the Periodic Smoke Inspection Program (PSIP).

DATE: October 21, 2010

TIME: 9:00 a.m.

PLACE: California Environmental Protection
Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 21, 2010, and may continue at 8:30 a.m., on October 22, 2010. This item may not be considered until October 22, 2010. Please consult the agenda for the meeting, which will be available at least 10 days before October 21, 2010 to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 2190, 2191 and 2194, title 13, California Code of Regulations (the regulations for the Periodic Smoke Inspection Program).

Background

Periodic Smoke Inspection Program

The PSIP was signed into law in 1990 (Senate Bill 2330) to control excessive smoke emissions from and tampering in commercial fleets of heavy-duty trucks and busses. It was implemented in July, 1998. The PSIP requires that owners of California based fleets of two or more diesel vehicles with gross vehicle weight ratings (GVWR) of greater than 6,000 pounds conduct annual smoke opacity inspections of their vehicles, repair those with excessive smoke emissions, and retain applicable records for a minimum of two years. Staff estimates that 379,242 vehicles in about 12,600 fleets are subject to PSIP in 2010¹. More information regarding the PSIP can be accessed at: <http://www.arb.ca.gov/enf/hdvip/hdvp.htm>.

Diesel Smog Check

Assembly Bill 1488 was enacted in 2007. It requires that diesel passenger cars and trucks, manufactured after the 1997 model year with GVWR of 14,000 pounds or less, be included in the California Smog Check Program beginning January 1, 2010. The diesel Smog Check Program is registration based and requires emissions checks on a biennial basis. The program is administered by the Department of Consumer Affairs, Bureau of Automotive Repair (BAR) with assistance from ARB. Diesel Smog Check inspections consist of a visual inspection of the emission control devices, an interrogation of the vehicle's on-board diagnostic (OBD) system, and a visual assessment of the vehicle's smoke level. About 510,700 diesel vehicles are subject to the diesel Smog Check Program, the vast majority of which are privately owned and not subject to the PSIP.

¹ California Air Resources Board, "Staff Report: Initial Statement of Reasons for Proposed Rulemaking. Public Hearing to Consider Proposed Amendments to California Regulations Governing The Heavy-Duty Vehicle Inspection Program (HDVIP) and the Periodic Smoke Inspection Program (PSIP), October 1997, pp 21.

Concurrent Impacts of the PSIP and Smog Check Programs

With the 2010 implementation of biennial Smog Checks for lighter diesel vehicles, about 76,740 diesel vehicles will be subject to both Smog Checks and PSIP opacity inspections. Every other year, owners of these vehicles will have to perform both tests in the same year. The tests are largely duplicative because they both evaluate smoke emissions of the vehicle.

The staff believes there is little or no air quality benefit from performing both tests in one year. There is a cost to the vehicle owner however; a PSIP inspection averages \$55 per test, and a Smog Check averages \$47 per test.

Proposed Action

ARB staff is proposing regulatory amendments to the current PSIP program to allow commercial truck fleets, subject to both the PSIP and the Smog Check Program to submit evidence of passing a Smog Check inspection as proof of compliance with the PSIP. The effect of the staff proposal is to reduce the cost of complying with these two programs by about \$55 every other year, with little or no loss of air quality benefits.

For those years when a Smog Check inspection is not required, the vehicle would still be required to perform a PSIP smoke inspection. Submission of documentation of passing Smog Check inspection, in lieu of a PSIP annual smoke opacity inspection, would only be for those calendar years when a Smog Check inspection is required. This change would apply to 1998 and subsequent model-year vehicles with GVWR of 14,000 pounds or less that are currently subject to the PSIP. The PSIP requirements for diesel vehicles not subject to Smog Check would be unchanged.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations at this time. Federal regulations for heavy-duty engines are limited to establishing new engine emission standards for oxides of nitrogen (NOx), particulate matter (PM), hydrocarbons (HC), and carbon monoxide (CO). This proposed amendment applies to the operation of in-use diesel vehicles in California.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposed amendment. The report is entitled: "Public Hearing to Consider Minor Amendments to the Periodic Smoke Inspection Pro-

gram in Response to the Inclusion of Diesel Vehicles in Smog Check (Assembly Bill 1488, Mendoza 2007)".

Copies of the ISOR and the full text of the proposed regulatory amendment language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on October 21, 2010.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed amendment may be directed to the agency contact persons, Mr. Robert Ianni, Air Resources Engineer, at (916) 322-0845 or Mr. Wayne Sobieralski, Air Resources Engineer, at (916) 323-1099, of the Heavy-Duty Vehicle Inspection and Maintenance Development Section.

Further, the agency representative and designated back-up contact person to who nonsubstantive inquiries concerning the proposed administrative action may be directed to Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Trini Balcazar, Regulations Coordinator (916) 445-9564. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposed amendment is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at: <http://www.arb.ca.gov/regact/2010/psip2010/psip2010.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determination of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations is presented below.

The Executive Officer has determined that, except as discussed below, the proposed regulatory action would not create costs or savings, as defined in Government Code sections 11346.5(a)(5) and 11346.5(a)(6), to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether

or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

The proposed regulation amendments would result in small cost savings to some State and local agencies and school districts that operate diesel powered trucks, manufactured after the 1997 model year with GVWR of 14,000 pounds or less that are subject to both the California Smog Check Program and the PSIP.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The Executive Officer has determined that certain private persons and businesses would not incur additional costs due to this regulatory item and in fact will incur a saving by not performing a PSIP test during years in which a vehicle would be subject to both programs. While some PSIP testing services may see a small decline in the number of smoke tests performed on vehicles having GVWR of 6,000 to 14,000 pounds², other Smog Check testing services may experience a small increase in the number of smoke tests. The proposed amendments only modify the frequency of PSIP inspections for vehicles having GVWR of 6,000 to 14,000 pounds to every other year. The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code sections 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses. Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as

² There are about 150 smoke testing services throughout the state and the vast majority of their testing service is for vehicles having GVWR greater than 14,000 pounds.

effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on September 6, 2010. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after September 6, 2010, and received **no later than 12:00 noon, October 20, 2010**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources
Board
1001 I Street, Sacramento, California
95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and other search engines.

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code, sections 39600, 39601, and 43701. This action is proposed to implement, interpret and make specific sections 39002, 39003, 39010, 39033, 43000, 43018, 43701(a), 44010.5, 44011, 44011.6 and 44012, Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text, as modified, is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language, as modified, could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e. Braille, large print) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Para solicitar alguna comodidad especial o si por su idioma necesita cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alternativo (es decir, sistema Braille, letra grande) u otro idioma;
- Una acomodación razonable relacionados con una incapacidad.

Por favor llame a la oficina del Consejo a (916) 322-5594 o envíe un fax a (916) 322-3928 lo mas pronto posible, pero no menos de 10 dias de trabajo antes del el dia programado para la audencia del Consejo. TTY/TDD/Personas que nesessitan este servicion pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

TITLE 14. FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 702, 7071, 8587.1 and 8588 of the Fish and Game Code and to implement, interpret or make specific sections 97, 200, 202, 205, 206, 215, 220, 240, 1802, 5508, 5509, 7056, 7071, 8585.5, 8586, 8587, 8587.1 and 8588, Fish and Game Code; 50 Code of Federal Regulations (CFR) Part 660, Subpart G; 50 CFR 660.384; and Section 27.20, Title 14, California Code of Regulations, proposes to amend sections 27.20, 27.25, 27.30, 27.32, 27.35, 27.45, 27.50, 27.65, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.54, 28.55, 28.56, 28.58, 28.65, 52.10 and 150.16, and repeal sections 27.40, 28.51, 28.52, 28.53, and 28.57, Title 14, California Code of Regulations (CCR), relating to recreational and commercial fishing regulations for federal groundfish and associated species for consistency with federal rules.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under California law, the Commission adopts regulations for recreational groundfish fishing in state waters zero to three miles from shore. The Commission has authority over commercial nearshore fishing, whereas the legislature has authority over other commercial fishing in state waters. The Pacific Fishery Management Council (Council), consisting of representatives from West Coast states, a tribal representative, and the National Oceanographic and Atmospheric Administration (NOAA) Fisheries, recommends management measures for jointly managed fisheries operating in federal waters three to 200 miles from shore. These management measures are established as federal regulations by the Secretary of Commerce. For consistency, ease of enforcement, and to avoid confusion on the part of recreational and commercial fishermen, the Commission routinely adopts regulations to bring state law into conformance with federal rules for groundfish and other federally-managed species. The proposed changes described in this action would make the requisite changes to make state regulations consistent with new federal regulations that are expected to be effective in January, 2011.

Groundfish and Associated Species

There are 90 species of federal groundfish that occur in state and federal waters off the coast of California, in-

cluding lingcod, several rockfishes, cabezon, kelp greenling, California scorpionfish, some flatfishes, and some sharks. These 90 species are managed primarily by the Council under the Pacific Coast Federal Groundfish Fishery Management Plan (Magnuson-Stevens Fisheries and Conservation Act 16 U.S.C. Section 1851 et seq. or "Magnuson") and are defined in Section 1.91, Title 14, CCR. Harvest of California scorpionfish, cabezon, nearshore rockfishes, and greenlings, all of which are federal groundfish, occurs primarily in state waters. Management guidelines for these species are also included in the state's Nearshore Fishery Management Plan (NFMP). California develops regulations for state waters that conform to, or are more conservative than, federal regulations.

California sheephead, ocean whitefish and all greenlings of the genus *Hexagrammos* are species that occur almost exclusively within state waters in California and are managed by the Department of Fish and Game (Department). These state-managed species, otherwise identified as "associated species" are known to be caught with federal groundfish, and thus are regulated in conjunction with federal groundfish by the state. The same regulations that apply to the 90 species of federal groundfish also apply to these associated species pursuant to regulations in Title 14, CCR.

Managing to Annual Catch Limits

Past and current management of federal groundfish and associated species include annual limits on take known as optimum yields (OYs); in the NFMP these limits are called Total Allowable Catch (TAC). In response to the recent reauthorization of the Magnuson Act, the Council revised the annual limits to specifically account for scientific and management uncertainty. These new harvest limits replace the OYs and are called Annual Catch Limits (ACLs), a federal take limit that accounts for all sources of fishing related mortality and is set at a level that is expected to prevent overfishing. Recreational and commercial sector-specific allocation limits are called harvest guidelines (HGs).

The Council develops groundfish regulations on a biennial basis. At its June 2010 meeting, the Council adopted new ACLs for some federal groundfish species along with HGs for the different fishery sectors for the 2011 and 2012 cycle. Management measures (e.g., seasons, depth constraints, bag limits) were also decided by the Council to keep within the new limits for each state and sector.

Stock Assessment Outcomes

Federal catch limits are adopted by the Council and established in regulation by the Secretary of Commerce. For state-managed nearshore species (Section 1.90, Title 14, CCR), more restrictive limits may apply in California depending on application of the fishery

control rules of the NFMP, and set at appropriate levels to maintain healthy stocks using the state's standards for sustainability.

Overfished Stocks

If a stock assessment reveals that the current population size is at or below 25 percent of the unfished biomass (the historic population size), it is considered "overfished".

Of the six groundfish species in California that are considered overfished species, yelloweye rockfish is the most constraining to the California recreational fishery.

For areas where yelloweye rockfish are most often encountered, proposed fishing seasons and depth constraints are similar to status quo. The depth constraint remains at 20 fm north of Point Arena and was not relaxed in areas further south to avoid yelloweye rockfish encounters. The Northern Management Area fishing season will only be extended by one and a half months.

Cowcod remains in an overfished status and continues to constrain the season length and allowable fishing depth to 60 fm in the Southern Management Area (Santa Barbara, Ventura, Los Angeles, Orange and San Diego Counties). The Cowcod Conservation Area (CCA) management area already protects a large portion of offshore southern California waters, where cowcod are most likely to occur. The CCA now has a proposed depth constraint of 30 fm.

Precautionary Stocks

The Council adopted new cabezon ACL values of 179 metric tons (394,600 pounds) for 2011 and 168 metric tons (370,400 pounds) for 2012 based on the new stock assessment information.

However, according to the NFMP, California is required to manage more conservatively for stocks whose depletion level is "precautionary," meaning the stock is below the NFMP's "healthy" target of 60 percent of unfished levels. The new cabezon assessment suggests the current population level is only 48 to 57 percent of unfished biomass in northern and southern California respectively. Following the NFMP's more restrictive control rules that apply when stocks are above 40 percent and below 60 percent of unfished levels, the Department is proposing that the Commission set the annual cabezon TAC at 148 metric tons (326,200 pounds).

The proposed TAC would be significantly higher than the current TAC established in Section 52.10, Title 14, CCR (152,100 pounds or approximately 69 metric tons). Because the TAC is allocated 39 percent to the commercial sector and 61 percent to the recreational sector, the allocations to each sector that presently are established in Section 52.10 would be adjusted proportionally so that the recreational fishery would be al-

lowed 199,000 pounds, and the commercial fishery 127,200 pounds.

Based on the increased ACL, for the recreational sector of the fishery the Council increased the statewide cabezon bag limit from two to three fish within the ten fish rockfish, cabezon, greenling (RCG) bag limit. Under a 3-fish bag limit, projected catches are still anticipated to fall below the recreational allocation of 199,000 pounds.

Commercial harvest is regulated to provide seasonal take of cabezon with cumulative trip limits per individual permittee. In August 2003, the Commission established cumulative trip limits for cabezon similar to the federal management approach for nearshore rockfish by limiting each permittee's take to a specified maximum level in a two-month period. The trip limits need to be adjusted upward to accommodate the proposed increase to the commercial allocation. The Department has proposed a range of trip limit options that would accommodate this increase. The range would allow the Commission to select any value between zero and 1000 pounds for each of five two-month cumulative limit periods.

Blue rockfish is another "precautionary" species and its status constrains central California. Although blue rockfish is not as constraining as it was in 2009–2010, blue rockfish still limits the 2011–2012 season length in Management Areas from Point Arena to Point Conception. The Council approved a moderate increase in the season length in Central California (Point Arena to Point Conception) in order to stay within the new HG of 241 metric tons for blue rockfish.

Healthy Stocks

In June, the Council greatly increased the California recreational HG for lingcod from 422 metric tons in 2010 to 1151 metric tons in 2011 and 2012. In order to maximize opportunity for lingcod while continuing to avoid overfished species, the Council chose to remove the lingcod spawning closure for all modes of recreational fishing in California. To allow for additional retention of lingcod, the Council adopted a new recreational size limit for lingcod of 22 inches (down from 24 inches) in an effort to maximize fishing opportunity and make regulations consistent among California, Oregon, and Washington. The new proposed fillet length is 14 inches.

The Council chose to increase the scorpionfish depth constraint from 40 to 60 fm in the Southern Management Area during January and February, making the depth constraint 60 fm year-round—consistent with the rest of the year.

Increased Fishing Opportunity

Based on the outcomes of recent stock assessments, and resulting increases to ACLs, the Council increased

recreational fishing opportunities where appropriate. The resulting 2011 and 2012 season structure and depth constraints adopted by the Council are provided in Table 1.

The proposed regulatory changes in Table 1 will affect boat-based anglers targeting groundfish and associated species; shore-based fishing and spearfishing continue to be allowed year-round for these species.

Table 1. Proposed season structure and depth constraints for the California recreational groundfish fishery for 2011 and 2012, adopted for federal waters by the Council in June 2010.

Management Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Northern	CLOSED				May 14 (2011) or May 12 (2012)–Oct 31 < 20 fm						CLOSED	
Mendocino	CLOSED				May 14 (2011) or May 12 (2012)–Aug 15 < 20 fm				CLOSED			
San Francisco	CLOSED				Open Jun 1–Dec 31 < 30 fm							
Central	CLOSED				Open May 1–Dec 31 < 40 fm							
Southern*	CLOSED		Open Mar 1–Dec 31 < 60 fm									
CCA*	CLOSED		Open Mar 1–Dec 31 < 30 fm**									

* California scorpionfish is open year-round

** Only nearshore and shelf rockfish, lingcod, cabezon, California scorpionfish, greenlings, California sheephead, and ocean whitefish are allowed in the CCA.

The Council adopted a 30 fm depth constraint for the Cowcod Conservation Area (CCA), rather than the current 20 fm, meaning all areas within the CCA that are deeper than 30 fm will continue to be closed to fishing for groundfish and associated species. The current 20 fm depth constraint is defined using general depth contours, while the 30 fm depth constraint will be defined by Federal waypoints. Waypoints are preferable for angler compliance and enforceability.

Only four areas within the CCA currently open to groundfish fishing will be affected by increasing the allowable fishing depth to 30 fm: Santa Barbara and San Nicolas Islands, and Tanner and Cortes Banks. Areas such as Osbourne Bank, which are currently open to 20 fm but drop off into deeper depths too quickly to allow compliance, will be closed to fishing.

The Council decided to expand the list of rockfish species that may be retained within the CCA to increase fishing opportunity south of Point Conception. Currently, only nearshore species are allowed and all shelf rockfish encountered within the CCA must be discarded. The Council adopted new regulations to allow for the take and possession of shelf rockfish, as defined in Section 1.91, Title 14, CCR, in the CCA.

Regulation Simplification and Consistency

In addition to changes that are expected to provide increased fishing opportunity, other changes to California recreational fishing regulations were adopted to simplify regulations. The Council removed the 10 fm depth closure around the Farallon Islands and Noonday Rock in order to simplify regulations. Of the habitat currently closed to fishing under this regulation, the vast majority is now part of the North Farallon Islands State Marine Reserve and Southeast Farallon Islands State Marine

Reserve. The reserves were established May 1, 2010, and prohibit fishing for groundfish and associated species. The limited area outside the reserves in less than 10 fm is not a concern for fishery management or conservation and would remain open to groundfish fishing under the specified depth constraint and season length in that Management Area.

To simplify the names used to describe the recreational Management Areas, the longer, less intuitive status quo names will be replaced with single word names that relate to the geographic location of the area. In addition, the Council chose to combine the Monterey (from Pigeon Point to Point Lopez) and Morro Bay (Point Lopez to Point Conception) South-Central Groundfish Management Areas into one area.

The Department proposes to combine regulations concerning minor federal groundfish into one section of Title 14, CCR, for simplification. These species include: Petrale sole, starry flounder, soupfin shark, Dover sole, English sole, arrowtooth flounder, spiny dogfish, big skate, California skate, longnose skate, ratfish, Pacific rattail, finescale codling, Pacific Cod, Pacific whiting, sablefish, longspine thornyhead and short-spine thornyhead.

For added consistency, the Council adopted gear restrictions such that no more than one line and two hooks may be used to recreationally take cabezon and greenlings. This action will make angling gear restrictions consistent among cabezon, greenlings, rockfish and lingcod, which are commonly caught and managed together as the RCG complex.

The specific proposed Title 14 regulation changes identified in this regulatory package (outlined below) are necessary in order to make the State's recreational

groundfish regulations consistent with the new federal rules that will be established by NMFS following the Council's actions. The proposed changes are necessary to provide the best fishing opportunities possible while staying within federal and state harvest limits.

- Modifications to Section 27.20, Groundfish Management Areas, Seasons, Depth, Exceptions, and Fishery Closure/Rule Change Process Described.

Existing regulations in subsection 27.20(e) describe the fishery closure and/or rule change process. A harvest limit includes optimum yield, recreational HG, and recreational harvest target. Proposed changes would include "annual catch limit" and "annual catch target" as valid types of harvest limits.

- Modifications to Section 27.25, Northern Groundfish Management Area.

Existing seasons, depth constraints, and special closure areas regulations (subsection 27.25(b)) establish a May 15 through September 15 season with a maximum depth constraint of 20 fm (120 feet) for groundfish and associated species for the waters between the Oregon border and the 40° 10' North Latitude management line near Cape Mendocino (Humboldt County). Proposed regulations would expand the fishing season for all groundfish and associated species by changing the season duration to May 14, 2011 (May 12, 2012) through October 31, and maintain the maximum depth constraint of 20 fm (120 feet).

- Modifications to Section 27.30, North-Central North of Point Arena Groundfish Management Area.

The name of the North-Central North of Point Arena Groundfish Management Area, defined in subsection 27.30(a), would be changed to the "Mendocino Groundfish Management Area" for brevity and ease of use.

Existing seasons, depth constraints, and special closure areas regulations (subsection 27.30(b)) establish a May 15 through August 15 season for groundfish and associated species with a maximum depth constraint of 20 fm (120 feet) for the waters between the 40° 10' North Latitude management line near Cape Mendocino (Humboldt County) and Point Arena (Mendocino County). Proposed regulations would keep the fishing season for all groundfish and associated species near status quo, only changing the opening date to May 14, 2011 (May 12, 2012) rather than May 15, while maintaining the maximum depth constraint of 20 fm (120 feet).

- Modifications to Section 27.32, North-Central South of Point Arena Groundfish Management Area.

Section 27.32 would be renumbered as Section 27.35.

The name of the North-Central South of Point Arena Groundfish Management Area, defined in subsection 27.32(a) would be changed to the "San Francisco Groundfish Management Area" in subsection 27.35(a).

Existing seasons, depth constraints, and special closure areas regulations in subsection 27.32(b) establish a June 13 through October 31 season for groundfish and associated species with a maximum depth constraint of 30 fm (180 feet) for the waters between Point Arena (Mendocino County) and Pigeon Point (San Mateo County). Regulations proposed for subsection 27.35(b) would expand the fishing season for all groundfish and associated species by changing the season length to June 1 through December 31, and maintain the maximum depth constraint of 30 fm (180 feet).

Regulations in Subsection 27.32(b)(4) establish a 10 fm or less fishing closure around the Farallon Islands and Noonday Rock. The proposed regulations would eliminate the 10 fm depth closure. Areas shallower than 10 fm within the Northern Farallon Islands or the Southeast Farallon Islands State Marine Reserves would continue to be closed; areas shallower than 10 fm outside the reserves would allow for groundfish fishing.

- Modifications to Section 27.35, Monterey South-Central Groundfish Management Area and Section 27.40, Morro Bay South-Central Groundfish Management Area.

Section 27.35 would be renumbered as Section 27.40.

Proposed regulations would combine the Monterey South-Central Groundfish Management Area, defined in subsection 27.35(a), and the Morro Bay South-Central Groundfish Management Area, defined in Section 27.40(a) into one management area. The new management area would be named the "Central Groundfish Management Area" and defined in 27.40(a) as ocean waters between Pigeon Point (San Mateo County) and Point Conception (Santa Barbara County).

Existing seasons, depth constraints, and special closure areas regulations (subsections 27.35(b) and 27.40(b)) establish a May 1 through November 15 season for groundfish and associated species, with a maximum depth constraint of 40 fm (240 feet), in both the Monterey and the Morro Bay South-Central Groundfish Management Areas. Regulations proposed for the new Central Groundfish Management Area in subsection 27.40(b) would expand the fishing season for all groundfish and associated species by changing the season length to May 1 through December 31. The maximum depth constraint would be maintained at the status quo of 40 fm (240 feet).

- Modifications to Section 27.45, Southern Groundfish Management Area.

Existing seasons, depth constraints, and special closure areas regulations (Section 27.45(b)) establish a

March 1 through December 31 season for groundfish and associated species with a maximum depth constraint of 60 fm (360 feet) for the waters between Point Conception (Santa Barbara County) and the U.S.–Mexico border, except that California scorpionfish may be taken in January and February with a maximum depth constraint of 40 fm (240 feet). Proposed regulations would keep the open fishing season at status quo, but increase the 40 fm California scorpionfish depth constraint to 60 fm. This action would make the Southern California scorpionfish depth constraint (60 fm) consistent with the Southern groundfish depth constraint (60 fm), and California scorpionfish would continue to be open year-round.

• Modifications to Section 27.50, Cowcod Conservation Areas

Existing seasons and depth constraint regulations (subsection 27.50(b)) establish a March 1 through December 31 season for specific groundfish and associated species with a maximum depth constraint of 20 fm (120 feet) for the waters inside the CCA as defined by general depth contour lines, except California scorpionfish may be taken year-round. Proposed regulations would increase the depth constraint inside the CCA from 20 fm to 30 fm year-round, as defined by Federal waypoints. Proposed regulations would add shelf rockfish, as defined in subsection 1.91(b), to the list of allowable species or species groups to be taken or possessed March 1 through December 31.

• Modifications Concerning Lingcod to Sections 27.25, Northern Groundfish Management Area; 27.30, North-Central North of Point Arena Groundfish Management Area; 27.32, North-Central South of Point Arena Groundfish Management Area; 27.35, Monterey South-Central Groundfish Management Area; 27.40, Morro Bay South-Central Groundfish Management Area; 27.45, Southern Groundfish Management Area; and 27.50, Cowcod Conservation Areas.

Existing lingcod season regulations in subsections 27.25(c)(3), 27.30(c)(2), 27.32(c)(3), 27.35(c)(3), 27.40(c)(3), 27.45(c)(3), and 27.50(c)(2) establish a lingcod spawning closure during January through March, and December for shore-based anglers. Proposed regulations would allow for take and possession of recreationally caught lingcod during these months from beaches, banks, piers, jetties, breakwaters, docks, and other man-made structures connected to the shore.

Existing lingcod season regulations described in subsections 27.25(c)(4), 27.30(c)(3), 27.32(c)(4), 27.35(c)(4), 27.40(c)(4), 27.45(c)(4), and 27.50(c)(3) establish a lingcod closure during January through March, and December for divers and spearfishers. Proposed regulations would remove the diving/spearfish-

ing provision so that recreational divers and spearfishers would be allowed to take and possess lingcod during these months.

Existing lingcod season regulations in subsections 27.45(b)(1), and 27.50(b)(1) through 27.50(b)(4) establish a lingcod spawning closure during January through March, and December for boat-based anglers in the Southern Groundfish Management Area and the CCA. Proposed regulations would allow for the statewide take and possession of recreationally caught lingcod during these months from any vessel when the season for groundfish and associated species is open by management area.

• Modifications to Section 27.65, Filleting Fish on Vessels

Existing regulations in subsection 27.65(b)(3) establish a 16 inch minimum fillet length for lingcod filleted on a vessel. Proposed regulations would lower the minimum lingcod fillet length to 14 inches when filleted on a vessel. This action is necessary to accommodate the decrease in the statewide lingcod minimum size limit from 24 inches to 22 inches total length. Each fillet would still need to bear intact a one-inch square patch of skin for identification.

• Modifications to Section 28.26 California Sheephead; Section 28.27 Lingcod; Section 28.28 Cabezon; Section 28.29 Kelp Greenling. Rock Greenling; Section 28.49 Dover Sole, English Sole, Petrale Sole, Arrowtooth Flounder, and Starry Flounder; Section 28.51 Spiny Dogfish, Soupfin Shark; Section 28.52 Big Skates, California Skates, and Longnose Skates; Section 28.53 Ratfish, Rattails and Codlings; Section 28.54 California Scorpionfish (Sculpin); Section 28.55 Rockfish (Sebastes); Section 28.56 Leopard Shark; Section 28.57 Pacific Cod, Pacific Whiting, Sablefish, and Thornyheads; and Section 28.58 Ocean Whitefish.

The proposed regulations would combine Sections 28.49 Dover Sole, English Sole, Petrale Sole, Arrowtooth Flounder, and Starry Flounder; Section 28.51 Spiny Dogfish, Soupfin Shark; Section 28.52 Big Skates, California Skates, and Longnose Skates; Section 28.53 Ratfish, Rattails and Codlings; and Section 28.57 Pacific Cod, Pacific Whiting, Sablefish, and Thornyheads into one section, Section 28.49.

Existing regulations establish seasons and depth constraints for these species or species groups. Additionally, some species or species groups have size, bag limits, exceptions, and/or gear restrictions. The proposed regulations would change season dates and/or depth constraints to match the proposed regulations for the different Groundfish Management Areas discussed above.

- Modifications to Section 28.27, Lingcod.

Subsections 28.27(a)(1) through 28.27(a)(7) define the open season for lingcod in each Management Area. Existing regulations in these subsections would be modified to make the lingcod season consistent with the general groundfish season as described above.

Existing regulations in subsection 28.27(c) establish a minimum size limit of 24 inches for lingcod statewide. The proposed regulations would modify the lingcod minimum size limit from 24 inches to 22 inches.

Existing regulations in subsection 28.27(d) establish a method of take for targeting lingcod. The allowable gear used to take lingcod is defined as not more than two hooks and one line. The proposed regulations would clarify these gear restrictions apply only when recreational angling for lingcod. Lingcod take by hand or while diving or spearfishing would continue to be allowed.

- Modifications to Section 28.28, Cabezon.

Existing regulations in subsection 28.28(b) provide for a two fish bag limit within the ten fish aggregate bag limit for rockfish, cabezon and greenling (the RCG complex). Proposed regulations would increase the cabezon bag limit from two fish to three fish, within the RCG complex bag limit.

Modifications to subsection 28.28(d) would define an allowable method of take for cabezon while angling. This action would restrict the cabezon method of take to not more than two hooks and one line, consistent with the lingcod and rockfish regulations.

- Modifications to Section 28.29, Kelp and Rock Greenling.

Modifications to subsection 28.29(d) would define an allowable method of take for kelp and rock greenling while angling. This action would restrict the kelp and rock greenling method of take to not more than two hooks and one line, consistent with the lingcod and rockfish regulations.

- Modifications to Section 28.54, California Scorpionfish (Sculpin).

Existing open areas, seasons, and depth constraints regulations (subsection 28.54(a)(6)) establish a January 1 through December 31 season for scorpionfish for the Southern Groundfish Management Area with a maximum depth constraint of 60 fm (360 feet) during March through December and a maximum depth constraint of 40 fm (240 feet) during January and February. Proposed regulations would change the January and February depth constraint for California scorpionfish to 60 fm (360 feet).

- Modification to Section 28.55 Rockfish (Sebastes).

Existing regulations in subsection 28.55(d) establish a method of take for targeting rockfish. The allowable gear used to take rockfish is defined as not more than

two hooks and one line. The proposed regulations would clarify these gear restrictions apply only when recreational angling for rockfish. Rockfish take by hand or while diving or spearfishing would continue to be allowed.

- Modification to Section 28.65, General Fin Fish Gear Restrictions.

Regulations in subsection 28.65(c) define the angling gear restriction when rockfish or lingcod are aboard or in possession as only one line and not more than two hooks. Proposed regulations would extend this gear restriction to cabezon and kelp and rock greenlings.

- Modifications to Section 52.10, Take of Sheephead, Cabezon and Greenling.

Current regulations in subsection 52.10(a)(2) set the annual TAC for cabezon at 152,100 pounds (69 metric tons). Proposed changes would increase the statewide TAC to 326,200 pounds (148 metric tons); consistent with the NFMP guidelines and the higher ACL adopted by the Council.

The commercial and recreational fisheries are each allocated a specified portion of the TAC in current regulation—subsections 52.10(a)(2)(A and B). Thus, the allocated harvest amounts for the commercial and recreational fisheries would need to be adjusted proportionally upward to account for the increase to the TAC. The current allocation ratio is 39 percent to the commercial sector and 61 percent to the recreational sector. This existing ratio was applied to the proposed new TAC to generate proposed sector allocations:

The commercial fishery allocation would increase from 59,300 pounds to 127,200 pounds.

The recreational fishery allocation would increase from 92,800 pounds to 199,000 pounds.

- Modifications to Section 150.16, Commercial Take of Nearshore Fishes.

The current cabezon two month cumulative trip limits per individual, established in subsection 150.16(e)(6)(A), are designed to keep catches to the allowable commercial catch of 59,300 pounds and are as follows:

January–February: 300 pounds
 March–April: 100 pounds
 May–June: 250 pounds
 July–August: 150 pounds
 September–October: 900 pounds
 November–December: 100 pounds

The Department has proposed a range of trip limit options to accommodate the proposed increase to the commercial allocation in Section 52.10. The proposed values per each two-month period range from 0 to 1,000 pounds. The Commission may select values from that range which will provide for commercial fishing yet ensure the commercial fishery does not exceed its new

higher annual allocation (see above under Modifications to Section 52.10) and which will continue to align the cabezon season with the minor nearshore rockfish season set by the Council.

Additional changes are proposed to clarify and simplify the regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lions Gate Hotel, 3410 Westover Street, McClellan, California, on Thursday, September 16, 2010 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Four Points by Sheraton Hotel, 8110 Aero Drive, San Diego, California, on Thursday, October 21, 2010 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 14, 2010 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on October 18, 2010.** All comments must be received no later than October 21, 2010, at the hearing in San Diego, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Jon K. Fischer, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Jon K. Fischer, or Sherrie Fonbuena at the preceding address or phone number. **Marija Vojkovich, Regional Manager, Marine Region, Department of Fish and Game, (805) 568-1246 has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection,

timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed management actions would relax recreational groundfish fishing regulations in all of the Groundfish Management Areas for one or more fish species and may have positive impacts to some businesses in California. Sport fishing business owners, boat owners, tackle store owners, boat manufacturers, vendors of food, bait, fuel and lodging, and others that provide goods or services to those that recreationally pursue groundfish off California may be positively affected to some degree from increases to business if the 2011 and 2012 seasons are adopted, relative to previous management cycles. Likewise, commercial fishing industry businesses may realize positive benefits from increased catches of cabezon. However, anticipated impacts are speculative and would vary considerably by geographic location and by the nature and extent of the regulatory action taken.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

The proposed regulatory action could produce some impact on the creation or elimination of jobs or businesses that rely on recreational or commercial fishing for groundfish and associated species. However, the degree of impact is highly speculative in nature and cannot be quantified. See response to (a) above.

(c) **Cost Impacts on a Representative Private Person or Business:**

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) **Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:** None.

(e) **Nondiscretionary Costs/Savings to Local Agencies:** None.

(f) **Programs Mandated on Local Agencies or School Districts:** None.

(g) **Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:** None.

(h) **Effect on Housing Costs:** None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED AMENDMENTS TO THE AIRBORNE TOXIC CONTROL MEASURE FOR STATIONARY COMPRESSION IGNITION ENGINES

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Airborne Toxic Control Measure for Stationary Compression

Ignition Engines (Stationary Diesel Engine ATCM or ATCM).

DATE: October 21, 2010

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., October 21, 2010, and may continue at 8:30 a.m., on October 22, 2010. This item may not be considered until October 22, 2010. Please consult the agenda for the hearing, which will be available at least 10 days before October 21, 2010, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to title 17, California Code of Regulations (CCR), sections 93115.3, 93115.4, 93115.6, 93115.7, 93115.8, 93115.9, 93115.10, and 93115.13, the Stationary Diesel Engine ATCM.

Background:

In 2004, the Board adopted the Stationary Diesel Engine ATCM (title 17, CCR section 93115). The ATCM established emission controls on stationary diesel-fueled compression ignition (diesel) engines that were greater than 50 horsepower (hp). For new emergency standby engines, the ATCM requires these engines to meet a 0.15 grams per brake horsepower (g/bhp-hr) particulate matter (PM) emission limit or the Off-Road Compression Ignition Engine Standard (title 13, CCR, section 2423)(Off-Road Standards), whichever is more stringent. In California, the Off-Road Standards will become more stringent than the ATCM 0.15 g/bhp-hr PM emissions requirement beginning with Tier 4 engines. The Tier 4 emissions limits will most likely cause engine manufacturers to require after treatment technologies such as a diesel particulate filter (DPF) and a selective catalytic reduction (SCR) system on their engines to meet the PM and oxides of nitrogen (NOx) standards.

Effective July 11, 2006, the United States Environmental Protection Agency (U.S. EPA) promulgated Standards of Performance for Stationary Compression-Ignition Internal Combustion Engines (NSPS)¹. How-

¹U.S. Environmental Protection Agency, Final New Source Performance Standards for Stationary Compression Ignition Internal Combustion Engines, 71 FR 39154, July 11, 2006.

ever, the NSPS final rule does not require manufacturers of new emergency standby diesel engines to meet the Tier 4 emission standards if after-treatment controls must be installed.

In the summer of 2009, representatives from the Engine Manufacturers Association (EMA) requested that ARB staff consider harmonizing the requirements for new emergency standby engines in the ATCM with those in the NSPS. ARB staff agreed to investigate the feasibility, costs, and emissions impacts associated with aligning the ATCM with the federal NSPS. Based on this work, ARB staff is proposing amendments to the ATCM to closely align with the federal NSPS requirements. The proposed amendments will reduce the cost of complying with the ATCM while still providing health protective emission limits for new emergency standby engines. The proposed amendments primarily affect the requirements for new stationary diesel engines used in non-agricultural operations.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

ARB staff is proposing amendments to the Stationary Diesel Engine ATCM to closely align the emissions standards with those in the federal NSPS, to help clarify provisions in the ATCM and address new information, and to remove provisions no longer needed. A summary of the proposed amendments is presented below. A more detailed description can be found in the Initial Statement of Reasons for Rulemaking at <http://www.arb.ca.gov/regact/2010/atcm2010/atcm2010.htm>.

Exemptions: ARB staff is proposing to remove the exemption that creates a sell-through provision in the ATCM. This provision was originally included in the regulation to help ensure an adequate supply of complying engines was available for installation and to minimize the adverse economic impacts to dealers as the new engine standards transitioned from one tier to the next. Since the regulation will now only require new emergency standby engines that meet a 0.15 g/bhp-hr emission standard, and engines that meet this standard have been available for several years, the sell-through provision is no longer needed. As will be discussed later, a new sell-through provision for prime engines, consistent with that in the NSPS, is being proposed as part of this rulemaking.

Definitions: ARB staff is proposing to add a new criterion to the “emergency standby engine” definition to clarify that any diesel engine that supplies power to an electric grid or that supplies power as part of a financial arrangement with any entity, except for those engines enrolled in a demand response program (DRP) as defined in the ATCM, is not considered an emergency standby engine. This amendment will make the emer-

gency standby engine definition consistent with the NSPS final rule.

ARB staff is also proposing to modify the definition of “emergency use.” The current definition of “emergency use” includes the operation of emergency standby engines on the day of rocket launch tracking performed by the U.S. Department of Defense at Command Destruct sites. This provision was originally included to address engines at Command Destruct sites supporting military operations at the Vandenberg Air Force Base. The base is now responsible for space plane landing and ARB staff is proposing to amend the definition of emergency use to specify that the operation of engines during rocket launch and space plane re-entry/landing is considered emergency use.

ARB staff is also proposing to amend the definition of “maintenance and testing” to add “uninterruptible power supply” to the list of supported equipment that may be tested during maintenance and testing operations.

Other minor amendments to the definitions are being proposed to reflect revised terminology or improve clarity.

Emission Limits for New Emergency Standby Engines: ARB staff is proposing to retain the 0.15 g/bhp-hr PM emissions limit for new emergency standby engines, align the other pollutant emission standards with the NSPS requirements, and, consistent with the NSPS requirements, require any new emergency standby engine to be 2007 model year or newer. This amendment will eliminate the existing requirement in the ATCM that would have required new emergency standby engines to meet the after-treatment based Tier 4 standards when they are more stringent than 0.15 g/bhp-hr. It will also require that any new emergency standby engine must meet the 2007 model year or newer emissions limits in the Off-Road Standards for all pollutants. No changes are proposed to the restrictions on the hours of operation for maintenance and testing or to the provisions that allow Districts to impose more stringent requirements.

Emission Limits for New Emergency Standby Direct-Drive Fire Pump Engines: ARB staff proposes to amend the ATCM to harmonize the PM and other pollutant emission standards with those in the NSPS for new emergency standby direct-drive fire pump engines. The NSPS final rule requires stationary fire pump diesel engines to meet emission standards similar to the NSPS stationary emergency standby engine standards with delays in implementation up to three years for most engines. There are also special extensions for engines with greater than 2,650 revolutions per minute. This decision was based on the timeframe required for these engines to meet National Fire Protection Association specifications, and the significant costs to require after-treatment when compared to amount of pollutant

reduced. These amendments will not require new emergency standby direct drive fire pump engines to meet Tier 4 after-treatment based standards. Rather they will meet either Tier 2 or Tier 3 standards based on the horsepower and model year of the engine.

Tier 4 Emissions Limit and Sell-Through Requirements for Prime Engines: The current ATCM requires new prime engines to meet a 0.01 g/bhp-hr PM emissions limit. This emission limit is the Tier 4 final PM limit for most horsepower ranges. However, for certain horsepower ranges, the Tier 4 final PM emissions limit is 0.02 g/bhp-hr.² To address this difference in emission standards, in an earlier rulemaking, the Board approved an alternative compliance provision that allows engines certified to the 0.02 g/bhp-hr PM emissions standards to be in compliance with the ATCM. To simplify the regulatory language in the ATCM, ARB staff is proposing to align the PM emissions limits for these engines with the NSPS standard of 0.02 g/bhp-hr. In addition, ARB staff is proposing to align with the NSPS final rule deadlines for installing prime engines manufactured during the prior model year. This change essentially allows for a 2-year sell-through for engines when the new engine standards transition from one tier to the next.

Emissions Limit and Reporting for Less than or Equal to 50 Horsepower Engines: ARB staff proposes to exempt less than or equal to 50 hp direct drive fire pump engines from the requirement to meet the Off-Road Standards and instead rely on the federal NSPS requirements for these engines. To align the ATCM with the NSPS, ARB staff also proposes to not require after-treatment based Tier 4 standards for new emergency standby engines less than or equal to 50 hp. In addition, ARB staff proposes to delete the ATCM provision that requires sellers and dealers of less than or equal to 50 hp stationary engines to annually report to ARB the number of engines sold. This data is no longer needed to support ARB's emission inventory program.

Reporting: ARB staff is proposing an amendment to require the owners or operators of emergency standby engines used in demand response programs to annually report information on engines and hours of operation to the local district and the Executive Officer of ARB. The current ATCM requires this information to be provided to the District upon request. This amendment will ensure that both ARB and the Districts will obtain this data annually and will enable more routine monitoring of the hours that engines are operating during demand response programs.

² Engines in the 50 to 75 bhp range and those greater than 750 bhp have a 0.02 g/bhp-hr PM emissions limit. These engines are DPF-equipped to meet that limit.

COMPARABLE FEDERAL REGULATIONS

On July 11, 2006, the U.S. EPA promulgated the NSPS for Stationary Diesel Engines. The emission standards required by the NSPS are modeled after U.S. EPA's standards for nonroad and marine diesel engines, which are phased in over several years (tiered standards) with increasing levels of stringency for NOx and PM. However, the NSPS final rule does not require manufacturers of new stationary emergency standby diesel engines to meet the Tier 4 interim and final standards if after-treatment controls must be installed.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Staff Report: Initial Statement of Reasons for Proposed Rulemaking — Proposed Amendments to the Airborne Toxic Control Measure for Stationary Compression Ignition Engines."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on October 21, 2010.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Peggy Taricco, Manager of the Technical Analysis Section, at (916) 323-4882, or Ryan Huft, Air Resources Engineer, at (916) 327-5784.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at

<http://www.arb.ca.gov/regact/2010/atcm2010/atcm2010.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

ARB staff does not expect any adverse economic impacts associated with the proposed amendments. Rather, the proposed amendments will create a future cost savings to any business or public entity that will be purchasing new emergency standby engines.

ARB staff estimates the total economic impact from the proposed amendments to the ATCM to affected private businesses and public agencies would be a cost savings of approximately \$460 million between 2010 and 2020 or about \$46 million annually. Of this, private businesses and public agencies are each expected to realize cost savings of about \$23 million annually. These cost savings are due to the alignment of the ATCM emissions standards for new emergency standby engines with those in the NSPS which do not require after-treatment based emission standards. Foregoing the application of after-treatment technologies such as DPF and SCR for new emergency standby engines, results in cost savings of about \$118 per hp. This translates to about \$71,000 cost savings for a typical 600 hp emergency standby engine.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the elimination of jobs within the State of California, or elimination of existing businesses within the State of California. The proposed regulatory action may result in the creation of jobs or businesses, or expansion of businesses if the cost savings are invested in productive assets other than Tier 4 engines. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses, because the proposed amendment would create a net savings for some small businesses.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses impose negligible costs and are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on September 6, 2010. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after September 6, 2010, and received **no later than 12:00 noon, October 20, 2010**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California
95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) be-

come part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB in Health and Safety Code sections 39600, 39601, 39658, 39659, 39666, 41511 and 43013. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 39002, 39650, 39658, 39659, 39666, 40000, 41511 and 43013.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e. Braille, large print) or another language;

- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Para solicitar alguna comodidad especial o si por su idioma necesita cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (es decir, sistema Braille, letra grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Por favor llame a la oficina del Consejo a (916) 322-5594 o envíe un fax a (916) 322-3928 lo mas pronto posible, pero no menos de 10 días de trabajo antes del el día programado para la audiencia del Consejo. TTY/TDD/ Personas que necesitan este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

TITLE 24. BUILDING STANDARDS COMMISSION

NOTICE OF PROPOSED CHANGES TO BUILDING STANDARDS OF THE STATE HISTORICAL BUILDING SAFETY BOARD REGARDING THE CALIFORNIA HISTORICAL BUILDING CODE CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 8

Amendments to
Chapter 8-7, Structural Regulations
Chapter 8-8, Archaic Materials and
Methods of Construction

Notice is hereby given that the State Historical Building Safety Board (SHBSB) proposes to adopt changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 8; California Historical Building Code (CHBC). The SHBSB is proposing changes to Chapter 8-7, Structural Regulations and Chapter 8-8, Archaic Materials and Methods of Construction.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; written comments will be accepted by the SHBSB regarding the proposed changes from September 3, 2010 until 5:00 p.m. on October 17, 2010. Please address your comments to:

State Historical Building Safety Board
1102 Q Street, Suite 5100
Sacramento, CA 95811-6550
Attention: Richard T. Conrad, FAIA, Executive Director

Written Comments may also be faxed to (916) 445-3521 or E-mailed to Richard.Conrad@dgs.ca.gov. Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be held.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, the SHBSB may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the SHBSB adopts, amends, or repeals the regulation(s). The SHBSB will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

The SHBSB proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18959.5. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code 18950 through 18961. The State Historical Building Safety Board is proposing this regulatory action based on Health and Safety Code 18958 and 18959.5.

INFORMATIVE DIGEST

Summary of Existing Laws

The California Historical Building Code (CHBC) provides alternative regulations and standards for the

rehabilitation, preservation, restoration (including related reconstruction), or relocation of qualified historical buildings or structures. These alternative standards and regulations are intended to facilitate the rehabilitation, restoration, or change of occupancy so as to preserve their original or restored architectural elements and features; to encourage energy conservation and a cost-effective approach to preservation; and to provide for the safety of the building occupants.

The CHBC provides means for the preservation of the historical value of qualified historical buildings or structures and, concurrently, to provide reasonable safety from fire, seismic forces or other hazards for occupants of these buildings or structures, and to provide reasonable availability to and usability by the disabled.

The SHBSB is composed of qualified experts in their respective fields who represent various state and local public agencies, design professionals and building and preservation oriented organizations. The SHBSB acts as a consultant to the State Architect and to the other applicable state agencies for purposes of the CHBC. The SHBSB recommends to the State Architect and other applicable state agencies rules and regulations for adoption pursuant to the CHBC. The SHBSB also acts as a review body to state and local agencies with respect to interpretations of the CHBC as well as on matters of administration and enforcement of the CHBC.

The SHBSB is comprised of representatives of state agencies and public and professional building design, construction, and preservation organizations experienced in dealing with historic buildings. Each organization appoints its own representatives. Each of the following must have one member on the board who serves without pay, but shall receive actual and necessary expenses incurred while serving on the board: The Division of the State Architect, The State Fire Marshal, The State Historical Resources Commission, The California Occupational Safety and Health Standards Board, California American Institute of Architects, Structural Engineers Association of California, a mechanical engineer; Consulting Engineers; and Land Surveyors of California, an electrical engineer, Consulting Engineers and Land Surveyors of California, California Council of Landscape Architects, The Department of Housing and Community Development, The Department of Parks and Recreation, The California State Association of Counties, League of California Cities, The Office of Statewide Health Planning and Development, The Department of Rehabilitation, The California Chapter of the American Planning Association, The Department of Transportation, The California Preservation Foundation, The Seismic Safety Commission, and The California Building Officials. The 20 members listed select a building contractor as a member of the board. The term of membership on the SHBSB is four

years, with the State Architect's representative serving continually until replaced.

All state agencies that enforce and administer approvals, variances, or appeals procedures or decisions affecting the preservation or safety of the historical aspects of qualified historical buildings or structures shall use the alternative provisions CHBC and must consult with the SHBSB to obtain its review prior to undertaking action or making decisions on variances or appeals that affect qualified historical buildings or structures.

Summary of Existing Regulations

The existing CHBC is Part 8 of the official 2010 triennial compilation and publication of the adoptions, amendments, and repeal of building regulations to the California Code of Regulations (CCR), Title 24, also referred to as the California Building Standards Code. This part is known as the California Historical Building Code.

The regulations published in Part 8 are known as the California Historical Building Code and are referred to herein as "the CHBC." The CHBC provides regulations for the preservation, restoration, rehabilitation, relocation or reconstruction of buildings or structures designated as qualified historical buildings or properties. The SHBC is intended to provide alternative solutions for the preservation of qualified historical buildings or properties, to provide access for persons with disabilities, to provide a cost-effective approach to preservation, and to provide for the reasonable safety of the occupants or users. These regulations require enforcing agencies to accept reasonably equivalent alternatives to the regular code when dealing qualified historical buildings or properties.

Summary of Effect

The effect of this proposed action would be to base the structural provisions of the CHBC on the International Building Code. The code previously referenced the Uniform Building code. The intent of the CHBC is to facilitate the preservation and continuing use of qualified historical buildings or properties while providing reasonable safety for the building occupants and access for people with disabilities.

Comparable Federal Statute or Regulations

There are no Federal Statutes or alternative building regulations applicable to qualified historic buildings or structures.

Policy Statement Overview

The California Historical Building Code (CHBC) provides alternative regulations and standards for the rehabilitation, preservation, restoration (including related reconstruction), or relocation of qualified historical buildings or structures. These alternative standards and regulations are intended to facilitate the rehabilita-

tion, restoration, or change of occupancy so as to preserve their original or restored architectural elements and features; to encourage energy conservation and a cost-effective approach to preservation; and to provide for the safety of the building occupants.

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

N/A

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The SHBSB has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts. The CHBC contains alternative building regulations that may be used by local agencies or school districts when dealing with qualified properties.

ESTIMATE OF COST OR SAVINGS

(An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district. Provide a copy of the "Economic and Fiscal Impact Statement" (Form 399))

- A. Cost or Savings to any state agency: **YES** There may be a cost savings to a state agency by utilizing the alternative building regulations in the SHBC.
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO** There will not be a cost to a local agency by utilizing the alternative building regulations in the SHBC.
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO** There will not be a cost to any school district by utilizing the alternative building regulations in the SHBC.
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

The State Historical Building Safety Board has made an initial determination that the adoption/amendment/repeal of these regulations will not have a significant

statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

These regulations are alternative regulations to the regular code and may be applied by private property and business owners if they so choose.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

These regulations do not require a report and do not require a finding that it is necessary for the health, safety, or welfare of the public that the regulations apply to businesses.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The SHBSB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

The SHBSB has assessed whether or not and to what extent this proposal will affect the following;

This proposal will not affect the creation or elimination of jobs within the State of California.

This proposal will not affect the creation of new businesses or the elimination of existing businesses within the State of California.

This proposal will not affect the expansion of businesses currently doing business with the State of California.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

The SHBSB has made an initial determination that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

The SHBSB must determine that no reasonable alternative considered by the state agency or that has other-

wise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the State Historical Building Safety Board website: <http://www.dsa.dgs.ca.gov/SHBSB/default.htm>.

Interested parties may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

SHBSB CONTACT PERSON FOR ADMINISTRATIVE AND TECHNICAL QUESTIONS

General questions regarding procedural, administrative and technical issues should be addressed to:

Richard T. Conrad, FAIA, Executive Director
State Historical Building Safety Board
1102 Q Street, Suite 5100
Sacramento, CA 95811-6550
Telephone No.: (916) 324-7180
Facsimile No.: (916) 445-3521

TITLE 25. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT CALIFORNIA CODE OF REGULATIONS, TITLE 25, DIVISION 1, CHAPTER 3, ARTICLE 2.5

NOTICE IS HEREBY GIVEN that the California Department of Housing and Community Development (HCD) proposes to amend regulations administered by its Manufactured Housing Program.

AUTHORITY AND REFERENCE

Health and Safety Code (HSC), Division 13, Part 2, commencing with Section 18000 establishes require-

ments for enforcement and standards that guides the Manufactured Housing Program within HCD. Specifically, Sections 18015, 18020 and 18031 grant HCD the authority to promulgate regulations to interpret and make specific provisions relating to the design and construction of various structures manufactured, altered, remanufactured, or converted under HCD's jurisdiction.

INFORMATIVE DIGEST

Summary of Existing Laws

State laws governing HCD's Manufactured Housing Program are found in the HSC, Division 13, Part 2, commencing with Section 18000. Specifically, Chapters 3 and 4, commencing with Section 18020, establish requirements for enforcement and standards. Federal laws governing manufactured housing built on or after June 15, 1976, are found in Title 42, United States Code, Chapter 70, beginning with Section 5401.

In order to implement, interpret, clarify and otherwise carry out state law, regulations are promulgated by HCD. These regulations are contained in the California Code of Regulations, Title 25, Division 1, Chapter 3, Subchapter 2, commencing with Section 4000. Federal regulations governing manufactured housing built on or after June 15, 1976, are located in Title 24, Code of Federal Regulations beginning with Section 3282.1. Construction standards for manufactured homes manufactured on or after June 15, 1976, are found in Title 24, Code of Federal Regulations, Chapter XX, Part 3280.

Summary of Existing Regulations

The Manufactured Housing Program regulation requirements for the installation of fire sprinkler systems are found in California Code of Regulations (CCR), Title 25 (T25), Division 1, Chapter 3, Subchapter 2, Article 2.5, beginning with Section 4300. These regulations currently provide preemptive standards for the optional installation of fire sprinkler systems in new and used manufactured homes (MH), and multifamily manufactured homes (MFMH) with two dwelling units.

Summary of Effect of Proposed Regulatory Action

The proposed regulatory action will continue to provide preemptive requirements and standards for the installation of fire sprinkler systems in new and used MH/MFMH units; provide updated construction, testing and listing standards; and replace an outdated term.

The proposed regulatory action adopts, with amendments, the National Fire Protection Association (NFPA) 13D 2010 edition "Standard for the Installation

of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes." Currently, T25, Chapter 3, Article 2.5 references the 1999 edition of NFPA 13D, thus making the current referenced standards out-of-date. This regulation package will bring MH/MFMH into line with conventionally-built new homes by adopting and enforcing current standards.

MH/MFMH are currently constructed and installed under preemptive state and federal construction standards. Preemptive and uniform standards are a key component of MH/MFMH affordability due to the use of standardized factory-built procedures. Otherwise, MH/MFMH would be subject to various city and county rules and ordinances that are more restrictive and with differing degrees of enforcement. These differences would greatly interfere with uniformity and the use of standardized factory-built procedures thus raising the costs of homes. Additionally, referencing the most current standards used for conventionally-built homes leads to greater acceptance of the homes by both the public and local jurisdictions.

Summary of Sections Affected

The specific sections of CCR, Title 25, Division 1, Chapter 3, Subchapter 2, Article 2.5 to be amended, including the Subchapter 2 heading, are — Sections 4300, 4302, 4304, 4306, 4308, 4310, 4312, 4314, 4316, 4318, 4320, 4322, and 4324.

CCR, Title 25, Division 1, Chapter 3, Subchapter 2, Section 4313 is to be added.

Comparable Federal Statutes or Regulations

None.

POLICY STATEMENT OVERVIEW

The Manufactured Housing Program within HCD is responsible for adopting and enforcing preemptive state regulations for the construction, alteration, remanufacture, conversion, sale, rent or lease of manufactured homes, multifamily manufactured homes, mobilehomes, commercial modulars and special purpose commercial modulars within California. Program staff also performs activities on behalf of the U.S. Department of Housing and Urban Development (HUD), as a State Administrative Agency. HCD's mission includes promoting both safety and affordability of housing and related structures in California.

SMALL BUSINESS IMPACT STATEMENT

Small businesses will not be significantly affected by these regulations. Small businesses benefit from the promulgation of uniform standards to the same degree noted for all like businesses.

DISCLOSURES REGARDING THE PROPOSED ACTION

HCD has made the following initial determinations:

- Mandate on local agencies and school districts: NONE.
- Costs or savings to any state agency: NONE.
- Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.
- Other non-discretionary costs or savings imposed upon local agencies: NONE.
- Costs or savings in federal funding to the state: NONE.
- Significant effect on housing costs: NONE.

BUSINESS IMPACTS

HCD has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. However, there exists the need to propose amendment of these regulations to alleviate a potential adverse economic impact on business, should businesses manufacture structures for use in California without a consistent set of requirements applicable statewide. The potential adverse impact of not adopting these amendments would result in cities and counties passing their own fire sprinkler ordinances, adopting more restrictive sprinkler rules, and making compliance more costly and difficult for small businesses.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON(S) OR BUSINESS(ES)

Currently, the cost to the consumer of an NFPA 13D fire sprinkler system installed in the manufacturing facility in a two-section manufactured home ranges from \$2,500–\$4,000 if installed by a licensed fire sprinkler contractor. The costs to the manufacturer and consumer are less if a factory installs its own fire sprinkler systems, with those costs ranging from \$1,000–\$3,500¹. If the water supply at the home's installation site is not adequate to operate the system (private well, or low water pressure), the consumer may incur the additional expense of installing adequate or additional water storage, such as a holding tank. The cost associated with instal-

lation of holding tank storage equipment is approximately \$2,500–\$3,000.

Nationwide costs of installation of a fire sprinkler system in site-built dwellings during construction average \$1.50 to \$2.00 a square foot². Under the proposed amendments, those costs would be slightly less when installed in a factory using production-line techniques. An average cost of \$1.50–\$2.00 per square foot nationally is equivalent to installation of a solid-surface counter top or other similar upgrades homeowners typically purchase when buying a home. The sprinkler system is paid for over the life of the mortgage, same as the electrical or mechanical systems installed in the home during construction.

These additional costs generally may be mitigated by lower insurance costs as it relates to fire damage. As an incentive for its customers, some insurance companies offer discounts from 5 percent to 30 percent off the fire protection portion of the homeowner's insurance premium.

Cost analysis of the installation of a multipurpose NFPA 13D fire sprinkler system using PEX piping in a single-story site-built home indicates that total material and labor costs are \$701.16, including design approval. Cost estimates factoring in a 100 percent material markup for the same system resulted in total costs of \$946.32.³

This regulatory action results in no additional cost to the public or business than what is already in place. Adoption of the updated NFPA 13D results in little to no additional cost to the public or businesses. The balance of the regulatory package consists of minor clean-up and grammatical changes to regulatory language.

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

HCD has determined that this regulatory proposal will not have impact on the creation or elimination of jobs in the State of California as sprinkler systems have been installed in manufactured homes in many cities and counties in California for over ten years. HCD has determined that the impact on manufacturers and dealers will not be significant and will not result in the elimination of existing businesses.

CONSIDERATION OF ALTERNATIVES

Throughout the development of this proposed rule-making, HCD must determine that no alternative will be

¹ Data provided by Terry Richardson, Hydro Fire Systems Inc., San Juan Capistrano, CA.

² Data provided by the "Home Fire Sprinkler Coalition," www.homefiresprinkler.org.

³ Data provided by U.S. Department of Commerce, National Institute of Standards and Technology, "Economic Analysis of Residential Fire Sprinkler Systems" published December 2005.

more effective in carrying out the purpose for which the action is proposed or that no alternative will be as effective or less burdensome to affected private persons than the proposed action.

During the development of this rulemaking, the following alternatives were determined not to be acceptable and were rejected:

- Installation of Sprinkler Systems, One- and Two-Family Dwellings and Manufactured Homes NFPA 13D 1999 Edition. A comparison analysis of the 1999 and 2010 editions was performed by HCD staff in order to determine the need to adopt the 2010 edition. It was determined that the 2010 edition would be adopted for the following reasons:
 1. The 2010 edition and the 1999 editions are very different in format and content. Since local enforcement agencies and inspectors will be most familiar with the most current edition using the 2010 edition will foster greater acceptance.
 2. The California Residential Code references the 2010 edition for site-constructed dwellings. In order to provide consistency among state and local enforcement agencies, use of the same standards is preferable in order to provide more consistent enforcement and foster greater acceptance of manufactured housing units by the local enforcement agencies providing on-site testing approval.

PUBLIC HEARING

A public hearing has been scheduled at which time any interested party may present statements, orally or in writing, about this proposed regulatory action. The hearing will be held as follows:

- Date: October 18, 2010
- Time: 9 a.m. — 12 p.m.
- Place: Department of Housing and Community Development
1800 3RD Street — Conference Rooms
183/185
Sacramento, CA 95811

Pre-hearing registration will be conducted on the day of the hearing. Those registered will be heard in order of their registration. Anyone else wishing to speak at the hearing will be afforded an opportunity after those registered have presented their testimony. The time allowed for each person to present oral testimony may be limited if a substantial number of people wish to speak.

Individuals presenting oral testimony are requested, but not required, to submit a written copy of their statements. The hearing(s) will be adjourned immediately following the completion of the oral testimony. The public hearing facilities are accessible to persons with mobility impairments. If any special assistance is required (e.g., interpreter), please notify the contact person named in this notice at least 15 days prior to the public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to HCD. All written comments must be received at this office no later than 5:00 p.m. on October 18, 2010 in order to be considered.

Written comments may be submitted by regular mail, electronic mail (e-mail), facsimile transmission or hand-delivery as follows:

By mail to: Department of Housing and
Community Development
Division of Codes and
Standards
Attn: Shasta Sanborn
PO BOX 31
Sacramento, CA
95812-0031

By e-mail to: ssanborn@hcd.ca.gov

By facsimile to: (916) 327-4712
Attn: Shasta Sanborn

By hand-delivery to: Department of Housing and
Community Development
Division of Codes and
Standards
1800 3rd Street, Room 260
Sacramento, CA 95811
Attn: Shasta Sanborn or
Kevin Cimini

AVAILABILITY OF DOCUMENTS AND CONTACTS

HCD has prepared an *Initial Statement of Reasons* for the proposed regulatory action that has available all the information upon which the proposal is based. Copies of the rulemaking file, including the exact language of the proposed regulations, *Initial Statement of Reasons*, the *Final Statement of Reasons* (when available) and other information, if any, may be obtained upon request from HCD at the following location, mailing address or from the contact person listed below:

Department of Housing and Community
Development
Division of Codes and Standards
1800 3rd Street, Room 260
Sacramento, California 95811

PO BOX 31
Sacramento, California 95812-0031

In addition, this Notice, the exact language of the proposed regulations and the *Initial Statement of Reasons* may be found on HCD's website at <http://www.hcd.ca.gov/codes/mhp/>.

Questions regarding the substance of this regulatory proposal may be directed to:

Mr. Kevin Cimini, Manufactured Housing Programs
Telephone: (916) 445-3338, Fax: (916) 327-4712
E-mail: kcimini@hcd.ca.gov

Questions regarding the regulatory process may be directed to:

Ms. Shasta Sanborn, Codes and Standards
Administration
Telephone: (916) 327-2797, Fax: (916) 327-4712
E-mail: ssanborn@hcd.ca.gov

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the 45-day public comment period, HCD may adopt substantially related proposals or may modify the proposals if the modifications are sufficiently related to the original text. The text of any modified proposal, with the exception of minor technical or grammatical changes, will be made available from the contact person(s) designated in this Notice. The modified text will be available for at least a 15-day comment period prior to adoption and mailed to those persons who have submitted written or oral testimony related to this proposal or who have requested notification of any changes to the proposal. HCD will accept written comments on the modified regulations during the 15-day period.

GENERAL PUBLIC INTEREST

TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Em-

ployer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or CEIR has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P.O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P.O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P.O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication September 3, 2010
CESA CONSISTENCY DETERMINATION
REQUEST FOR
Dutton Community School Project
Sonoma County
2080–2010–044–03

The Department of Fish and Game (Department) received a notice on August 24, 2010 that the Sonoma County Office of Education (SCOE) proposes to rely on a Section 10(a)(1)(B) Incidental Take Permit to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). The action involves construction of a new community school on 4.42 acres in Santa Rosa, Sonoma County (Project).

Project activities will result in the permanent loss of 4.13 acres of California tiger salamander (*Ambystoma californiense*) upland habitat, and permanent loss of 0.07 acres of California tiger salamander breeding habitat and Sebastopol meadowfoam (*Limnathese viniculans*) habitat. The project could also result in direct mortality of individual California tiger salamanders and Sebastopol meadowfoam. The U.S. Fish and Wildlife Service (Service) issued an intra-Service “no jeopardy” biological opinion (81420–2008–F–1639)(BO), incidental take statement (ITS), and a Federal Fish and Wildlife Permit on August 12, 2008 and a Low-Effect Habitat Conservation Plan on June 20, 2008 which considered the effects of the project on the Federally and State threatened California tiger salamander, and the Federally and State endangered Sebastopol meadowfoam.

Pursuant to California Fish and Game Code Section 2080.1, SCOE is requesting a determination that the BO, ITS, Fish and Wildlife Permit, and Low-Effect Habitat Conservation Plan are consistent with CESA for purposes of the proposed Project. If the Department determines the BO, ITS, Fish and Wildlife Permit, and Low-Effect Habitat Conservation Plan are consistent with CESA for the proposed Project, SCOE will not be

required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

DEPARTMENT OF HEALTH CARE SERVICES

NOTICE OF GENERAL PUBLIC INTEREST

THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES WILL ADOPT REVISED BILLING CODES FOR MEDI-CAL PROGRAM 2010 CURRENT PROCEDURAL TERMINOLOGY — 4TH EDITION (CPT– 4) AND 2010 HEALTHCARE COMMON PROCEDURE CODING SYSTEM (HCPCS) LEVEL II

Effective for dates of service on or after September 1, 2010, the California Department of Health Care Services (DHCS) will adopt the 2010 Healthcare Common Procedure Coding System (HCPCS) Update, including the 2010 Current Procedural Terminology — 4th Edition (CPT– 4), and the 2010 HCPCS Level II codes and modifiers. DHCS will establish specific reimbursement rates as follows:

- The maximum reimbursement for durable medical equipment using the updated billing codes, except wheelchairs and wheelchair accessories, will be established at an amount not to exceed 80 percent of the 2010 Medicare rates. Reimbursement for wheelchair and wheelchair accessories will be established at an amount not to exceed 100 percent of the 2010 Medicare rates (Welfare and Institutions Code section 14105.48).
- The maximum reimbursement for orthotic and prosthetic appliances and clinical laboratory services using the updated billing codes will be established at an amount not to exceed 80 percent of the 2010 Medicare rates (Welfare and Institutions Code sections 14105.21 and 14105.22).
- Maximum reimbursement for physician services, including surgical procedures, using the updated billing codes will be established at an amount not to exceed 80 percent of the 2010 Medicare rate for the same service.

These proposed changes will impact the following provider categories:

- Clinical laboratories
- Durable medical equipment
- Hospital outpatient departments and clinics
- Long-term care facilities

- Ground medical transportation
- Other outpatient clinics
- Optometrists
- Orthotists and prosthetists
- Pharmacies/pharmacists
- Physicians
- Podiatrists
- Providers of services under the California Children's Services/Genetically Handicapped Persons Program

PUBLIC REVIEW

The proposed changes are available for public review at local county welfare offices throughout California. Written comments must be submitted within 45 days from the publication date of these changes in the California Regulatory Notice Register. All comments should include the author's name, organization or affiliation, phone number and Provider ID number, if appropriate. Members of the public may request the proposed list of billing codes, and proposed reimbursement rates under the 2010 HCPCS Update from, and submit comments to:

Linda Machado, Chief
Provider Rate Section
California Department of Health Care Services
1501 Capitol Avenue
MS 4612
P.O. Box 997417
Sacramento, CA 95899-1417

DEPARTMENT OF PARKS AND RECREATION

Public Interest Notice
For Publication September 3, 2010

DIRECTOR'S PROPOSED FINDINGS
Relating to Reconfiguration of
Candlestick Point State Recreation Area

Chapter 203, Statutes of 2009 (SB 792)

BACKGROUND

Chapter 203, Statutes of 2009, (SB 792) authorizes the Director of the Department of Parks and Recreation (Director) to enter into land exchange agreements with the State Lands Commission, the City and County of San Francisco (City) and the Redevelopment Agency of

the City and County of San Francisco (Agency) in order to provide for the reconfiguration and improvement of the Candlestick Point State Recreation Area (CPSRA) and to facilitate implementation of a major redevelopment of the Hunters Point Shipyard/Candlestick Point areas of San Francisco, proposed by the City and the Agency (Redevelopment Project). Based on existing deeds, the current CPSRA (exclusive of underwater lots) is compromised of approximately 160 acres of property, approximately 98 of which is held in fee by the Department of Parks and Recreation (State Parks), with the remainder being leased to State Parks by the State Lands Commission, which holds the property in fee as trust lands.

In furtherance of the legislative goals articulated in SB 792, State Parks negotiated a Parks Reconfiguration Agreement (Agreement) with the Agency and the State Lands Commission which, inter alia, authorizes the conveyance of certain lands within the existing CPSRA to the Redevelopment Agency, in exchange for other lands, cash and other consideration, and upon certain specified terms and conditions.

In addition to the conveyances described in the Agreement, and as authorized by SB 792, State Parks negotiated with the State Lands Commission for an exchange of ownership interests of property currently in the CPSRA, whereby the State Lands Commission's ownership and trust interests will be consolidated along the shoreline band of the CPSRA (and leased to State Parks), and State Parks will hold a fee interest in the inland portions of the CPSRA. This exchange of ownership interests is governed by the Hunters Point Shipyard/Candlestick Point Title Settlement, Trust Exchange and Boundary Line Agreement (Trust Exchange). Parties to the Trust Exchange also include the Agency and the City, which have agreed to make certain conveyances of lands to the State Lands Commission for the purpose of impressing certain lands with the Public Trust, in exchange for the conveyance and termination of the Public Trust on other lands which are needed for the Redevelopment Project.

Following certification of the Environmental Impact Report for the Candlestick Point-Hunters Point Shipyard Phase II Development Plan Project (EIR), the Agency approved the Redevelopment Project, the Agreement, and the Trust Exchange on June 3, 2010. The City's Board of Supervisors made a number of approvals relating to the Redevelopment Project including approval of the Trust Exchange, on July 27, 2010, and finally approved the Redevelopment Project on August 3, 2010.

Section 26 of SB 792 requires the Director to make certain written findings prior to executing any agreement to convey to the City or to the Agency any interest in real property held by the state within the existing

boundaries of the CPSRA. The Director is also required to publish in this Register proposed findings no less than 30 days prior to making final findings.

PROPOSED FINDINGS

Unless otherwise noted each of the documents cited in the proposed findings may be found in the depository of documents found at www.parks.ca.gov/findings.

FINDING NO. 1:

STATE PARKS WILL RECEIVE MONETARY AND OTHER FORMS OF CONSIDERATION HAVING A TOTAL VALUE OF FIFTY MILLION DOLLARS (\$50,000,000.00), WHICH IS GREATER THAN THE FAIR MARKET VALUE OF THE PROPERTY PROPOSED TO BE REMOVED FROM THE CPSRA AND CONVEYED TO THE AGENCY PURSUANT TO THE TERMS OF THE AGREEMENT.

Support for Finding No. 1:

State Parks will receive \$50,000,000.00 in monetary and other compensation. (**Agreement, sections 4.1 and 4.2.**)

The fair market value of the property proposed to be conveyed to the Agency pursuant to the Agreement was determined by an appraisal prepared by Clifford Associates "Appraisal Report, Hunters Point Shipyard/Candlestick Point Redevelopment Project Site, dated April 20, 2010 (Appraisal). The subject property analyzed in the Appraisal includes those portions of the CPSRA to be conveyed to the Agency. The Appraisal concludes that the fair market value of the State property was substantially below \$50,000,000. At State Parks request, the Real Estates Services Division of the Department of General Services has reviewed and approved the Clifford Associates appraisal. (**Appraisal Report.**)

FINDING NO. 2:

THE FORM OF CONSIDERATION FOR THE STATE PROPERTY TO BE CONVEYED OUT OF THE CPSRA CONSISTS OF THE FOLLOWING:

- (A) **THE PROVISION OF FUTURE FUNDING FOR THE OPERATION AND MAINTENANCE OF THE CPSRA IN THE AMOUNT OF TEN MILLION DOLLARS (\$10,000,000.00),**
- (B) **THE AMOUNT OF FORTY MILLION DOLLARS (\$40,000,000.00) TO BE USED FOR THE COST OF PLANNING AND CONSTRUCTING IMPROVEMENTS IN THE RECONFIGURED CPSRA THAT WILL ENHANCE ITS USE AS A PARK,**

(C) **LAND WITHIN THE REDEVELOPMENT PROJECT AREA WILL BE ADDED TO THE CPSRA,**

(D) **STATE PARKS WILL BE REIMBURSED FOR ITS LEGAL, TRANSACTIONAL, PLANNING AND OTHER COSTS ASSOCIATED WITH IMPLEMENTING THE PROVISIONS OF SB 792, AND**

(E) **THE DIRECTOR FINDS THAT IT IS NOT APPROPRIATE TO REQUIRE ANY ADDITIONAL MONETARY COMPENSATION.**

Support For Finding No. 2:

(A) Section 4.1 of the Agreement provides that the Agency will provide \$10 million, in cash, to State Parks for the exclusive purpose of providing a dedicated source to augment funding for the operation and maintenance of the reconfigured CPSRA. (**Agreement, section 4.1.**)

(B) Section 4.2 of the Agreement provides that the Agency will provide \$40 million for planning and constructing park-related improvements within the reconfigured CPSRA (improvement fund) (**Agreement, sections 4.2, 5.3.**)

(C) Lands comprising approximately seven acres will be added to the reconfigured CPSRA in accordance with Section 3, and Exhibits B and C of the Agreement. (**Agreement, section 3, Exhibits B and C.**)

(1) The Agency will convey to State Parks fee title interest to lands identified in the Agreement as the "Yosemite Slough Trust Termination Parcel" and the "Park Addition Trust Termination Parcel" pursuant to section 3.3 of the Agreement. (**Agreement, section 3.3.**)

(2) The Agency will convey to the State Lands Commission fee title interest to lands identified in the Agreement as the "Yosemite Slough Addition Public Trust Parcel" and the "Park Addition Public Trust Parcel," pursuant to section 3.1 of the Agreement, and thereafter, in accordance with section 3.5 of the Agreement, the State Lands Commission will lease these two parcels to State Parks for inclusion in the reconfigured CPSRA for a period of 66 years. (**Agreement, sections 3.1, 3.5.**)

(D) Section 5.3 of the Agreement provides reimbursement to State Parks for legal, transactional, planning, and other costs associated with implementing the provisions of SB 792. (**Agreement, section 5.3.**)

(E) The Director determines that the payment of \$50 million is sufficient to compensate State Parks for the land that is being transferred out of the CPSRA to the Agency, and that it is not appropriate to require the payment of additional monetary compensation.

FINDING NO.3:

THE AGREEMENT WILL PROVIDE AN OVERALL BENEFIT TO THE STATE RECREATION AREA AND WILL FURTHER THE OBJECTIVE OF PRESERVING THE PARK'S NATURAL, SCENIC, CULTURAL, AND ECOLOGICAL VALUES FOR PRESENT AND FUTURE GENERATIONS.

Support For Finding That The Agreement Will Provide An Overall Benefit To The State Recreation Area:

Land exchange

The existing CPSRA General Plan (as amended March 1988) states that the park unit is of statewide significance because it is the first State Park System unit purposely acquired to bring State Park System values into an urban setting. One of the purposes of the park unit is “. . .to make available to the people the recreational opportunities, passive and active, that are offered by the shoreline, waters, and environment of the San Francisco Bay, and the adjacent bay waters.” (**General Plan Amendment, March 1988, at p.9.**)

The Agreement supports the stated unit purpose by adding approximately 5.6+/- acres of land to the CPSRA directly adjacent to the existing CPSRA along Jamestown Avenue, near Hermit's Cove. The Agreement refers to this area as the Park Addition Parcels. (**Agreement, Exhibit C.**) (Although the Park Addition property is currently owned by the City and County of San Francisco and leased by the City to the San Francisco 49ers, the City has approved an Agreement For Transfer of Real Estate between the City and County of San Francisco and the Redevelopment Agency obligating itself to transfer the property to the Agency for subsequent conveyance to the State upon termination or expiration of the lease. Paragraph 19.6 of the Rec/Park agreement expressly identifies State Parks as a third party beneficiary giving state Parks the authority to enforce the transfer. (**Rec/Park agreement.**)

The conveyance of the Park Addition property by the Agency to the State will result in an increase in the width of the park along approximately 1,300 lineal feet of the existing CPSRA southern shoreline edge, at an area known as “The Neck.” The addition of this property will provide the CPSRA with additional land along the shoreline of the existing park where the land has eroded necessitating the placement of riprap in order to stabilize the road fill bank. Continued erosion is expected to occur, in part due to sea level rise and storm surges. Currently there is not enough land above mean high tide to provide the desired level of public access and there is no improved pedestrian access in this area. The increased width of the park at this location will allow space for a high quality segment of the Bay Trail to be constructed and beach day-use facilities, thereby

providing increased visitor access to the bay shoreline. The additional land will also provide opportunity for erosion control and shoreline stability solutions to be constructed. (**Final Parks, Open Space and Habitat Concept Plan, at p.115.**)

A portion of the CPSRA includes Yosemite Slough. State Parks, in partnership with the California State Parks Foundation (CSPF) and environmental organizations, has proposed a Yosemite Slough Restoration Project, which includes plans for habitat restoration, soil remediation, trail construction, and educational programming in the area surrounding Yosemite Slough. The Agreement promotes the Yosemite Slough Restoration Project, and therefore benefits the entire CPSRA, by obligating the Agency to convey to the State approximately 1.3 acres of land needed for the Restoration Project. (**Agreement, Sections 3.1, 3.3, and Exhibits B and C.**)

The Agency will convey the Yosemite Slough Addition to the State as part of the first phased closing under the Agreement, and will convey the Park Addition to the State as part of the second phased closing. (**Agreement, section 5.2.**) As noted in Paragraph B of the Agreement, and in the Rec/Park Agreement, the Agency will not obtain title to the Park Addition Parcels until the City's lease with the San Francisco 49ers terminates or expires. The transfer of any land out of the CPSRA after the first closing phase is contingent on the transfer of the Park Addition to the State. (**Agreement, sections 5.3(a), 13.2.**) (**Rec/Park Agreement, paragraph B.**)

The lands to be removed from the CPSRA, in contrast, currently add little recreational value to the CPSRA. Approximately two-thirds of the area (18 acres) consists of the landward-most portion of an area that serves a parking lot for the adjacent 49ers football stadium. These lands consist of dirt, gravel and paved parking areas with no landscape beautification or park facilities and little or no ecological value. The remaining areas (approximately 9 acres total) include a paved parking area along the Hunters Point Expressway near the main entrance and an adjacent grassy area; a narrow strip along Harney Way; and portions of the Arelious Walker Drive right of way on either side of Yosemite Slough. The lands to be added to the CPSRA under the Agreement will provide substantially greater benefit to the CPSRA than is provided by the lands to be removed. (**Candlestick Point-Hunters Point Shipyard Phase II Development Plan EIR (“EIR”), Recreation Section p. III.P-17-25, Comments and Responses p. 753-54; Lennar Urban, Existing Candlestick Point State Recreation Area Land Quality & Proposed SRA Land Exchange, dated July 7, 2010 (map).**)

The CPSRA, as reconfigured under the Agreement, will not be significantly adversely affected by adjacent

vertical development, in particular by the effects of shadow. The Redevelopment Project design incorporates building height restrictions and allowable tower locations that will minimize shadowing on the CPSRA. The Tower Variant D option, developed by the Agency, in consultation with State Parks, to address shadow issues and adopted as part of the final Redevelopment Project, would result in shadowing of portions of CPSRA during approximately 3% of total daylight hours (**Candlestick Point–Hunters Point Shipyard Phase II Development Plan, Comments and Responses, Page C&R–7, Tower Variant D; Letter from CADP (shadow consultant) to Wells Lawson dated August 5, 2010.**) The amount of new shadow within the CPSRA created by the Redevelopment Project will not substantially affect the park.

Other compensation

The Agreement also supports and benefits the CPSRA insofar as it obligates the Agency to provide State Parks with \$10 million to augment funding for operation and maintenance expenses of the CPSRA (**Agreement, section 4.1.**), and \$40 million for planning and constructing park-related improvements within the reconfigured CPSRA (**Agreement, section 4.2.**), including reimbursement for the State’s planning, or other costs associated with actions carried out pursuant to Section 27 of SB 792 (**Agreement, section 5.**). These park-related improvements are expected to include facilities to support wind surfing, picnicking, non-motorized boating, wildlife habitat enhancement and interpretive facilities. Costs for revising the 1988 General Plan currently underway are also being funded by the \$40 million improvement fund.

As required by SB 792, the Agreement earmarks both the park improvement funding and the operation and maintenance funding for use at CPSRA, assuring the funds will be used to benefit the CPSRA. (**Agreement, sections 4.1, 4.2, 14.**) The park improvement funding will substantially improve the recreational value of the CPSRA; it will allow State Parks to fully implement the vision of the CPSRA reflected in the General Plan, as it may be amended.

The operation and maintenance funding is also critical to the long term viability to the CPSRA. The operation and maintenance funding will ensure the CPSRA has a dedicated funding source for park operations and maintenance for years to come.

The Agreement also obligates the Agency to cooperate in providing State Parks with 3,000 square feet of community facilities space within Candlestick Point, that the Agency is to receive under the Redevelopment Project, without payment of a purchase price or base rent. (**Agreement, section 20.**) It is anticipated that State Parks will use this space for a welcoming or in-

formation center for the CPSRA, further enhancing the experience of visiting the park. In addition, provision of this community facilities space allows State Parks to better utilize the lands within the reconfigured CPSRA for shoreline related recreation.

Increased protection of the shoreline property

Overall support for the CPSRA is also found in the Trust Exchange referenced in paragraph A of the Agreement. By the Trust Exchange, State Parks, the State Lands Commission, the Agency and the City have agreed to make certain conveyances of lands for the purpose of impressing certain lands with the Public Trust, and terminating the Public Trust on other lands, resulting in a consolidation of trust lands along the shoreline of the CPSRA. These shoreline lands will be leased by the State Lands Commission to State Parks, for a period of 66 years, pursuant to Section 3.5 of the Agreement, and operated by State Parks as an integral part of the reconfigured CPSRA. These trust lands will also continue to be subject to Public Trust restrictions, enforced by the State Lands Commission, which restrictions provide additional assurance that these shoreline lands will be preserved in public ownership in perpetuity. (**Agreement, section 3.5.**) (**Trust Exchange.**)

The Agreement Will Further Preservation of The Park’s Natural And Ecological Values:

Existing natural and ecological values of the CPSRA are noted in the Resources Element of the General Plan: “in the mud and sand beds are a number of invertebrates, including soft shell and bent nosed clams, ghost shrimp, marine worms, and many other small animals” and, “oysters and other invertebrates are found on the rocks along the shoreline. All of these invertebrates are important to the bay ecosystem. . . The Bay also supports a relatively large population of waterfowl and water-associated birds, many of which are migratory, and a smaller number that are resident. . . the bay. . . has great potential for future improvement and enhancement.” The General Plan recognizes that “the natural environment of significance is the San Francisco Bay itself.” (**General Plan Amendment, March 1988, at p. 13.**)

The Agreement helps preserve these natural and ecological values by maintaining these shoreline areas undisturbed. The increase of the width of the park at “The Neck” will widen the buffer between the bayshore and non-park development reducing potential risks to the shoreline habitats from impacts arising outside the CPSRA.

The Agreement protects the restoration of the slough by requiring that the design, planning and construction of the Yosemite Slough Bridge be coordinated with State Parks and CSPF. (**Agreement, Section 21.**) Implementation of the Yosemite Slough Restoration Proj-

ect will provide suitable habitat for various bird species and other animals noted in the Natural Values section of the General Plan, and will also enhance the bay shoreline. The Yosemite Slough Addition lands, which will be conveyed to the State pursuant to the Agreement, are within the Restoration Project area and are needed to fully implement the Restoration Project.

The Agreement obligates the Agency to provide funding resources equivalent to \$50 million. These resources will assist with providing additional enhancement of habitats and renovation of the CPSRA's ecological systems, helping fulfill the potential for future improvement, including improvement discussed in the current General Plan. The improvements will be further described in the General Plan revision now under way, and are expected to include enhancements of existing tidal wetlands, improvements to planned areas of grasslands and expansion of tree canopies and large shrub habitat. **(General Plan Amendment, March 1988, at p. 14.)**

With regard to construction of a bridge across Yosemite Slough, Section 21.2 of the Agreement provides that “. . .the Agency and State Parks shall (a) reasonably cooperate to identify and incorporate into the construction and design plans for the Bridge features that will (i) be consistent with the wetland and aquatic habitat objectives set forth in the Wetland Restoration and Management Plan, Yosemite Slough, WRA, Environmental Consultants, January, 2006 (“Restoration Plan”), which may include, but are not limited to, providing new or restored habitat to compensate for any portion of the wetland or aquatic habitat (or any upland habitat that is immediately adjacent to the Bridge abutments) that is proposed to be created or restored in the Restoration Plan but cannot be created or restored due to Bridge construction; (ii) provide vista points in the park and on the Bridge offering views of the Bay and the Slough; (iii) ensure that Bridge design and aesthetics meet a high standard of excellence; (iv) provide for substantial views of the Bay beyond the bridge from the Slough; (v) ensure consistency with the public access and recreational objectives of the Restoration Plan, including the ability to navigate small human-powered craft between the Slough and the Bay and which may include, but are not limited to, providing new or enhanced recreational or public access improvements to compensate for any portion of the proposed creation of such improvements under the Restoration Project (as that project is described in the Restoration Plan) that cannot be created due to Bridge construction; and (b) use their best efforts to reach mutual agreement on the final Bridge design, construction plans, and associated enhanced restoration plans. . .”

In addition, Section 21.1 of the Agreement provides that the Agency “shall not undertake, approve, or per-

mit construction of the Bridge unless all of the following conditions are met: (a) the Bridge is required to function primarily for public transit, bicycle, and pedestrian use, and is closed to private motor vehicle traffic except for no more than 20 days per year; (b) the Bridge will serve as a part of the open space network on all days when it is not open to private motor vehicle traffic; (c) any traffic lane on the Bridge that will carry private vehicle traffic will be no wider than 10 feet; (d) no more than four private vehicle traffic lanes will exist on the Bridge; and (e) the bicycle and pedestrian lanes on the Bridge will be integrated with the bicycle and trail system in the CPSRA.” These provisions will ensure, among other things, that the size and function of the bridge are limited and that the bridge will not preclude the accomplishment of the objectives of the Restoration Plan.

Support For Finding That The Agreement Will Further Preservation of The Park's Scenic Values:

The existing General Plan states that “[T]he setting of Candlestick Point State Recreation Area next to the San Francisco Bay provides important opportunities for satisfying the recreation and open space needs of people living or visiting in the San Francisco area. It is the policy of the department to protect the scenic values. . .while fully realizing the potential of the area for fulfillment of outdoor recreation needs.” The General Plan also notes that the recreation area includes “areas of seclusion and panoramic views, including distant views of the San Bruno Mountain, East Bay hills, and San Francisco Bay, which impart a relaxing sense of solitude.” **(General Plan Amendment, March 1988, at p. 14.)**

These scenic values will be preserved by the Agreement. The shoreline areas and key observation points from which visitors observe San Bruno Mountain, the East Bay hills, and San Francisco Bay remain within the CPSRA, preserving these scenic vistas. “The Neck” area of the shoreline defines the northerly shore of Hermit's Cove which contains a very large sand beach and provides exceptional viewing areas looking southwest towards San Bruno Mountain. The widening of “The Neck” area of the park, which will result from the land transfers described in the Agreement, will result in creating a buffer between the new development and the shoreline, moving noise and other disturbances from roadway traffic away from the Park, thereby enhancing the sense of solitude enjoyed by park visitors. Also, the Candlestick Point SRA General Plan revision currently underway contemplates use of a portion of the \$40 million improvement fund provided in Section 3 of the Agreement for construction of enhancements and improvements to the shoreline which will preserve and

improve the scenic value of the CPSRA as viewed from the Bay and other shoreline areas.

In addition, if a bridge is built across Yosemite Slough, the Agreement ensures that State Parks will be a participant in the design of any bridge, and that the Agency will cooperate with State Parks to incorporate design features that will provide vista points in the park and on the bridge offering views of the San Francisco Bay and Yosemite Slough, and provide for substantial views of the bay beyond the bridge from the slough. (**Agreement, section 21.2.**)

Support For Finding That The Agreement Will Further Preservation of The Park's Cultural Values:

The existing General Plan notes that the Candlestick Point area consists principally of fill materials deposited since 1955. State Parks is currently unaware of any archaeological sites within the CPSRA. There are however, Native American shellmounds known to occur in the general area, outside of the boundaries of CPSRA and there is also potential for shellmound(s) to occur beneath the fill material within CPSRA. (**General Plan Amendment, March 1988, at p. 14.**)

Off shore areas of the CPSRA are known to include at least four hulks embedded in the underwater mud just off shore at Candlestick Cove, an area near the southwest edge of CPSRA. This area was used for marine salvage operations between 1910 and 1940, and it is believed that the four hulks are the remains of salvaged wooden ships. Additional hulks maybe buried in the filled areas around CPSRA, however the existence of such is undocumented.

The Agreement does not contemplate any activity which would disturb or destroy the known cultural resources; these resources will remain buried and protected beneath the fill material within CPSRA.

The Agreement provides partial funding for preparation of the CPSRA General Plan Amendment revision currently underway. (**Agreement, section 4.2.**) The revision contemplates new interpretive opportunities of the archeological and historical resources of the site and vicinity that will be funded from the \$40 million improvement fund guaranteed by the Agreement. (**Agreement, section 4.**)

FINDING NO. 4:

FOLLOWING THE CONVEYANCES DESCRIBED IN THE AGREEMENT, THE RECONFIGURATION OF THE CPSRA WILL SUBSTANTIALLY CONFORM TO THE CONFIGURATION SHOWN ON THE DIAGRAM REFERENCED IN SECTION 27 OF SB 792, AND MORE PARTICULARLY ILLUSTRATED ON THE MAP ON FILE WITH CITY'S PLANNING DEPARTMENT ENTITLED, "PROPOSED

STATE PARK LAND EXCHANGE" AND DATED SEPTEMBER 3, 2009.

Support For Finding No. 4:

The diagram referenced in Section 27 of SB 792 and the September 3, 2009 map referenced in Section 26 (a) (4) of SB 792 (collectively, "statutory configuration") are attached to the Agreement as Exhibit E. Exhibits A, B and C to the Agreement depict the parcels of land that will be transferred out of, and added to the CPSRA. The reconfiguration of the CPSRA following the conveyances depicted on Exhibits A, B and C will be the same as the statutory configuration, except for an approximately 63 foot strip of land along the Arellious Walker Street right of way on the north side of the Slough which will be also transferred out of the CPSRA to the Agency.

The Director finds that the transfer of this approximately 0.8 acre strip of land out of the CPSRA is minor and is not a substantial departure from the statutory configuration. This minor departure from the statutory configuration is necessitated by the Director's decision that construction of the Yosemite Bridge abutments/footings along Arellious Walker Street should not occur on State Parks land; therefore this property will be conveyed to the Agency, subject to the State's reversionary interest if the bridge is not constructed within a specified time period. (**Agreement, section 2.2, Exhibits A, B, C and E.**)

FINDING NO. 5:

THE REDEVELOPMENT PROJECT, INCLUDING THE RECONFIGURATION OF THE STATE RECREATION AREA, WILL NOT RESULT IN A SIGNIFICANT ADVERSE EFFECT ON BIOLOGICAL RESOURCES, AND WILL INCLUDE HABITAT ENHANCEMENT MEASURES TO BENEFIT MIGRATORY BIRDS AND OTHER WILDLIFE. IN MAKING THIS DETERMINATION, THE DIRECTOR HAS TAKEN INTO CONSIDERATION THE MITIGATION MEASURES INCORPORATED INTO THE REDEVELOPMENT PROJECT EIR.

Support For The Finding That The Redevelopment Project Will Not Result In A Significant Adverse Effect On Biological Resources:

Based upon the information presented in the EIR, the Redevelopment Project with the inclusion of mitigation measures, will not have a substantial adverse effect on any special-status plant or wildlife species, riparian habitat, federally-protected wetlands, or other sensitive natural communities. The Redevelopment Project will also not substantially interfere with the movement of any native resident or migratory fish or wildlife species, wildlife corridors, or wildlife nursery sites. The Redevelopment Project will not have any significant and un-

avoidable impacts to biological resources. (**EIR, Chapter V.**) The Redevelopment Project does not conflict with any local policy or ordinance that protects biological resources, or with a regional habitat conservation plan or natural community conservation plan.

PBS&J, an environmental consultant for the EIR, completed a biological study of the Redevelopment Project Cite and the aquatic areas, including Yosemite Slough, during the summer of 2007 and in 2008. This study included a field survey documenting existing habitats, the plants and animals occurring in those habitats, and any significant habitat types that may be protected by state and federal law. PBS&J determined that landscaped/ornamental and non-native annual grassland habitats occupy much of Candlestick Point, while the Hunters Point Shipyard Phase II area consists largely of urban/developed areas, that small areas of freshwater wetlands and nontidal salt marsh are present at the Hunters Point Shipyard Phase II area, and that narrow strips of tidal salt marsh are present along the shoreline at scattered places on Candlestick Point and portions of the Hunters Point Shipyard Phase II area. PBS&J also concluded that no special-status plants have been recorded, and none are expected to occur, on the site although several species of special-status animal species are present (**EIR, Appendix N1 "Candlestick Point/Hunters Point Shipyard Redevelopment Project Biological Technical Report", Executive Summary.**)

The Redevelopment Project proposes the construction of non-park development on lands transferred out of the CPSRA that will be set back from the bayshore in significant measure so that redevelopment will not affect valuable bay habitats. (**EIR Chapter II, Figure II-4, Proposed Land Use Plan.**)

The lands to be removed from the CPSRA consist of approximately 21 acres of parking lot area and approximately five acres of disturbed, non-native grassland. Non-native grassland areas serve as foraging habitat for raptors such as red-tailed hawk and American kestrel. (**EIR at III.N-76 through 78.**) The removal and subsequent development of approximately five acres of these areas, along with the alteration of other such grasslands elsewhere on the Redevelopment Project site, would diminish raptors' ability to forage on the non-native grasslands. However, an adopted mitigation measure (MM BI-7b) for the Redevelopment Project requires the creation of new grassland foraging habitat, including 43 acres of new native grasslands on the southern portion of the shipyard (as discussed further below). (**EIR at III.N-78.**) The mitigation measure also requires trees and shrubs to be planted outside these grassland areas to provide foraging, nesting, and roosting habitat for birds. These measures will not only reduce impacts to foraging habitat to a less than signifi-

cant level, they would provide an overall habitat enhancement, as discussed further below.

The Redevelopment Project would involve removal and/or modification of areas that have the potential to contain special-status animal species, including: seven potentially breeding avian species, one bat species, and four fish species (green sturgeon, Chinook, steelhead, and longfin smelt). The Redevelopment Project also has the potential to affect designated critical habitat of the green sturgeon and Central California Coast steelhead, thus directly impacting threatened and/or endangered species through habitat conversion or unauthorized take. In addition, Redevelopment Project activities would occur within habitats of locally rare or sensitive species such as Pacific herring and Olympia oysters, as well as avian species protected by the Migratory Bird Treaty Act and the California Fish and Game Code.

However, implementation of ecological Redevelopment Project design features described in the Draft Final Parks, Open Space, and Habitat Concept Plan and required by mitigation measure MM BI-7b, would result in multiple measures to avoid, limit, and mitigate for impacts to special-status and legally protected species. Specifically, the Redevelopment Project design components would remove invasive species; restore, preserve, and enhance wetland, aquatic and grassland habitats; create stormwater treatment wetlands; revegetate the site with extensive planting of trees and shrubs; increase the vegetative cover for foraging and dispersing animals; and maintain and enhance habitat connectivity along the shoreline. Additionally, mitigation measure MM BI-6a.1 requires impact avoidance and pre-construction surveys for nesting special-status and legally protected avian species, and protection of active nests. Mitigation measures MM BI-4a.1 and 4a.2 protecting water quality, wetlands, and aquatic habitats, and requiring compensatory mitigation for lost wetlands and aquatic habitats; MM BI-5b.1, 5b.2, 5b.3 and 5b.4 requiring avoidance and minimization of impacts to eelgrass, and compensatory mitigation for lost eelgrass habitats; MM BI-9b to avoid pile-driving impacts on aquatic species; and MM BI-12a.1, 12a.2, 12b.1 and 12b.2 to reduce impacts to fish and their habitats will all provide additional protection of these sensitive species and provide mitigation for loss of their habitat as necessary to reduce impacts to less than significant levels. Additional mitigation measures describe specific survey and protection protocols for two species with particular needs, the burrowing owl and the American peregrine falcon. Implementation of these mitigation measures will ensure that any impacts to these species are less than significant. (**EIR, Biological Re-**

sources Section, p. III.N-73-74, 112, Draft Final Parks, Open Space And Concept Plan, pp. 158-164.)

The Redevelopment Project could impact wetlands and other aquatic habitat in connection with shoreline improvements and the construction of the Yosemite Slough Bridge, through direct filling or shading. **(EIR at III.N-56 through 68, 115 through 116.)** Permanent impacts to these areas and other wetlands impacted by the Redevelopment Project are subject to mitigation requiring the restoration or creation of wetlands having an area at least equal to the areas permanently filled, and additional restored or created wetlands equal to at least 50 % of the area impacted by shade. **(EIR at III.N-56 through 68.)** Such restoration or creation would be performed in accordance with the Wetlands and Jurisdictional Waters Mitigation and Monitoring Plan. **(EIR at III.N-60 through 62.)**

In addition, mitigation measure MM BI-4a.2 requires that temporarily impacted sensitive habitats be restored to their pre-construction condition following the completion of construction activities, and that all temporarily impacted wetlands, and other jurisdictional waters, whether in tidal or non-tidal areas, shall be restored to pre-construction contours following construction. Such impact areas include areas that are dewatered (e.g., using coffer dams) and/or used for construction access. Temporarily impacted wetlands that were vegetated prior to construction shall be revegetated in accordance with a Wetlands and Jurisdictional Water Mitigation and Monitoring Plan, as described above. **(EIR at III.N-60 through 62.)** A further mitigation measure requires Best Management Practices for construction, including erosion control measures and culverts to maintain wetlands' hydrologic connections to drainages. **(EIR at III.N-62 through 63.)** These mitigation measures will reduce wetland impacts to a less than significant level.

The Yosemite Slough Restoration Project will create and restore aquatic, wetland, and adjacent upland habitat in and around Yosemite Slough, which is also the site of the proposed Yosemite Slough Bridge. However, the bridge would not significantly affect the proposed restoration. The bridge would at most result in a negligible amount (0.0003 acre) of permanent fill in the areas that are to become new or restored wetlands under the Restoration Project, and would indirectly impact approximately 0.012 acres of new or restored wetlands with shading. These impacts will be compensated by the creation or restoration of similar habitat in accordance with the Wetlands and Jurisdictional Waters Mitigation and Monitoring Plan. **(EIR at III.N-60 through 62.)**

Following implementation of the Yosemite Slough Restoration Project, and construction of the Yosemite Slough Bridge, some reduction in wildlife use of the bridge footprint and immediate adjacent areas is ex-

pected to occur. However, reduction in use by wildlife species is not expected to rise to the level of significance **(EIR, Comments and Responses, at p. 53.)** The species and habitats that presently occur or are expected to occur on the site are found throughout the Bay Area; Yosemite Slough does not, and will not, following implementation of the Restoration Project, support biological resources that are unique to the site or that do not occur in much greater abundance in other parts of the Bay Area. The Redevelopment Project area currently supports a relatively low number of common wildlife species and habitats due to its urban and heavily disturbed condition; these species occur in greater numbers at other locations in the Bay Area. Therefore, any reduction in common species and habitats at the site would be insignificant in the regional context. Any impacts that would occur would be offset through implementation of the Habitat Plan **(EIR pp. III.N-50-51.)** and restoration and creation of wetland and aquatic habitats in accordance with the aforementioned Wetlands and Jurisdictional Waters Mitigation and Monitoring Plan. **(EIR at III.N-60 through 62.)**

Stephen C. Rottenborn, Ph.D., of H.T. Harvey and Associates, provided analysis of biological resource impacts in the EIR, including the potential impacts of the proposed Yosemite Slough Bridge. His analysis of the bridge is included in part in the Comment and Response section of the EIR. There are a variety of differing expert opinions, regarding the effect of the Yosemite Slough Bridge on special-status bird species, including Dr. Rottenborn's. It has determined that Dr. Rottenborn's opinions are well founded. Dr. Rottenborn concluded that nesting special-status bird species are not likely to be adversely affected by use of the bridge. According to Dr. Rottenborn, those species are not expected to nest on the constructed "bird islands" that are proposed as part of the Yosemite Slough Restoration Project because the islands would not provide suitable habitat for these species **(EIR, Comment and Responses p. 35.)**

Dr. Rottenborn also concluded that:

- (1) increase in lighting from the Yosemite Slough Bridge is not expected to result in a significant impact to wildlife use of Yosemite Slough, and (2) loud noise from traffic, noise, and human use of the site and Yosemite Slough Bridge would not deter wildlife (particularly bird) use of high quality habitat areas once animals have habituated to the bridge and to vehicular noise levels.

These conclusions are based on observations of bird use at eight different reference sites within the Bay Area. Those sites are: 1) Coyote Creek Reach 1A water-bird pond and South Coyote Slough (San Jose); 2) San Jose-Santa Clara Water Pollution Control Plan (San

Jose); 3) Pond 16A New Chicago Marsh and Triangle Marsh (Alviso); 4) Shoreline Park (Mountain View); 5) Palo Alto Baylands (Palo Alto); 6) South Bayside System Authority Plant (Redwood City); 7) Crissy Field (San Francisco); and 8) East San Francisco Bay shoreline along I-580 north of the Bay Bridge.

Dr. Rottenborn predicts that bird use at Yosemite Slough would not be substantially reduced as a result of the bridge. He cites four reference areas where birds routinely fly over roads that are wider and/or more heavily used by traffic than is likely to occur on the Yosemite Slough Bridge. Those reference areas are: 1) Highway 92 in Hayward, where waterbirds move between the Eden Landing Ecological Reserve on the south side of the highway and Hayward Regional Shoreline on the north (and between the Bay mudflats adjacent to each of these two areas) by flying over the highway; 2) Highway 84 in Menlo Park and Fremont, where birds move between ponds and along the bay-shore on both ends of the Dumbarton Bridge by flying over the highway; 3) Highway 37 west of Vallejo, where birds move between San Pablo Bay to the south and the Napa River and associated marshes to the north by flying over the highway; and 4) Highway 101 southeast of Mill Valley, where birds move between the portions of upper Richardson Bay on either side of the highway by flying over the highway.

Based upon the bird behavior at the above reference sites, Dr. Rottenborn concludes that waterbirds using Yosemite Slough, either presently or after implementation of the restoration Redevelopment Project, would move between Yosemite Slough and South Basin/SF Bay Areas to the east if they perceive the habitat value of Yosemite Slough to be high enough.

Dr. Rottenborn also states that exhaust emissions due to the traffic use of the Yosemite Slough Bridge, even on game days, would not result in substantial adverse effects on habitats of the slough, including restored habitats under the Restoration Project. This statement was based upon conditions at four reference sites in the Bay Area. Those reference sites are: 1) Palo Alto Flood Control Basin along Highway 101 and its frontage road in Palo Alto; 2) marshes near Inner Bair Island along Highway 101 in Redwood City; 3) tidal salt marsh at the Bay edge at the I-80/I-880 junction at the east end of the Bay Bridge in Oakland; and 4) tidal marsh along Highway 37 at the San Pablo Bay National Wildlife Refuge. **(EIR, Comments and Responses, pp. 47–50.)**

The portion of the Bay adjacent to the CPSRA and the rest of the Redevelopment Project site is designated as Essential Fish Habitat (EFH) in three federal fisheries management plans: the Pacific Coast Salmon Plan, the Coast Pelagics Fishery Management Plan, and the Pacific Groundfish Fishery Management Plan. **(EIR at III.N–88.)** The National Marine Fisheries Service has

also designated this part of the Bay as critical habitat for green sturgeon and Central California Coast steelhead, both special-status species. **(EIR at III.N–85.)** The construction of Yosemite Slough Bridge and other shoreline improvements associated with the Redevelopment Project could cause temporary impacts to EFH and critical habitat from sediment suspension and turbidity during construction and some loss of such habitat from placement of permanent fill, but these potential impacts will be reduced to a level of insignificance by mitigation measures requiring seasonal restrictions on in-water construction to avoid times when special-status species are present, worker training, best management practices during construction, and compensatory provision of habitat for any filled areas. **(EIR at III.N–85 through 93.)** Moreover, by removing piers and reducing coastal erosion, the Redevelopment Project would increase the amount of open water on the site, thus providing new EFH and critical habitat and benefiting the species. **(EIR at III.N–85 through 90.)**

Additional support for the finding that the Redevelopment Project will not significantly impact biological resources is found in the EIR and its supporting documents.

Support For The Finding That The Redevelopment Project Will Include Habitat Enhancement Measures To Benefit Migratory Birds And Other Wildlife:

The following Habitat Enhancement Measures will be implemented as part of the Habitat Plan to enhance wildlife habitat conditions within the Redevelopment Project site:

Control of non-native invasive species — Invasive, non-native plant species would be removed during initial habitat enhancement efforts to provide areas for creation of higher-quality habitats and to prevent their spread into restored native habitats. Monitoring and ongoing control/removal of these species would be implemented. **(Draft Final Parks, Open Space, and Habitat Concept Plan, at p.158).**

Restoration of grasslands — A Grasslands Ecology Park will be developed on the Hunters Point Shipyard area, and will create at least 43 new acres of native grassland through the removal of non-natives, and seeding and/or plugs of native grass and forb species. Detailed design of the grassland restoration areas will be performed by a qualified restoration ecologist. A list of native grasses and forbs that may be used is included in the Habitat Plan. **(Draft Final Parks, Open Space, and Habitat Concept Plan, pp. 158–160.)**

Increase in tree/shrub cover — Approximately 10,000 net, new trees will be planted throughout the Redevelopment Project area. While some of these trees will be planted as street trees or for ornamental purposes, a large number will be planted specifically with

wildlife habitat in mind. Within parks such as the Grasslands Ecology Park (outside of the designated grassland restoration areas), trees, shrubs and ground cover will be planted in clusters to provide dense, multi-layered clumps of vegetation that will provide food, cover, and roosting, nesting, and foraging sites for a variety of wildlife species. Enhancement of raptor foraging habitat under the Draft Final Parks, Open Space, and Habitat Concept Plan will include restoration and management of grasslands and an increase in tree and shrub cover. (EIR, MM-BI-7b.). A list of native trees and shrubs that could be planted is included in the Plan, as well as detail about how the planting palette will allow for wildlife diversity. (Draft Final Parks, Open Space, and Habitat Concept Plan, pp. 160–162.)

Maintenance of habitat connectivity — To help maintain habitat connectivity throughout the site, vegetated areas providing cover for dispersing mammals, reptiles, and amphibians would be provided. For example, along the southern edge of the Hunters Point Shipyard Phase II area, vegetated areas providing cover for dispersing mammals, reptiles, and amphibians would be provided. In some areas, restored tidal marsh will provide some habitat connectivity along the shoreline. “Hardened” shoreline treatments, such as rock, will provide interstitial spaces to provide cover for these small animals as well. (Draft Final Park, Open Space, and Habitat Concept Plan, p. 162.). The Agreement further provides for the addition of property to the reconfigured CPSRA which will result in the widening of the CPSRA along the southwestern shoreline at an existing “pinch point,” allowing habitat enhancement and improving connectivity along CPSRA shoreline.

(Agreement, sections 3.1, 3.3, and 3.5.)

Maintenance of refugia for waterbirds — At least one shoreline area at least 200 feet from the nearest formal trail or shoreline observation area will be provided where waterbirds can roost at high tide. Here, waterbirds would be able to roost on riprap, beach, or some other open area removed from concentrated human activity. In addition, the bases of three piers in the southeastern corner of the Hunters Point Shipyard Phase II area will be removed to prevent mammals from accessing these piers. The remainder of each of these three piers will be left in place to provide roosting sites for gulls, cormorants, pelicans, and terns. Preventing mammalian predators from accessing these piers will make them safer for roosting waterbirds, and may also encourage some waterbirds to begin nesting on the piers. (Draft Final Parks, Open Space, and Habitat Concept Plan, pp. 162–163.)

Increase in open water habitat — New subtidal and intertidal habitat will be created along much of the eastern shoreline of the Hunters Point Shipyard Phase II area when existing pier walls are removed and the edges

of the existing shoreline “laid back.” The Redevelopment Project as a whole will result in a net increase of eight acres of open water that can serve as habitat for fish and benthic organisms. (Draft Final Parks, Open Space, and Habitat Concept Plan, pp. 163–164.)

In addition, the EIR includes a discussion of how the Redevelopment Project will benefit the main wildlife groups:

Extensive planting of native vegetation would enhance the vegetation community as well as enhance habitat for common butterflies, birds, small mammals, reptiles, and amphibians on the Redevelopment Project site;

In the case of migratory birds, the Redevelopment Project would result in a net benefit that would have regional or flyway-level implications, as the Redevelopment Project would enhance foraging habitat that is used by birds breeding and wintering in areas far from the Study area;

Neotropical and other long-distance migrants, the landbird group using the site that is of greatest conservation concern, would receive a considerable net benefit from the Redevelopment Project. Increases in foliage height diversity and vegetation volume resulting from the planting of numerous trees and shrubs on the site, most of which currently supports little woody vegetation, would result in increase in the diversity and abundance of both breeding and migratory birds.”

[Three references are provided for this statement: 1) MacArthur, R.H. and J.W. MacArthur. 1961. On bird species diversity. Ecology 42:594–598, 2) Karr, J.R. 1968. Habitat and avian diversity on strip-mined land in east-central Illinois. Condor 70:348–357, 3) Mills, G.S., J.B. Dunning, Jr., and J.M. Bates. 1991. The relationship between breeding bird density and vegetation volume. Wilson Bulletin 103:468–479]; and

The Redevelopment Project’s revegetation component and the addition of new parklands will provide a net enhancement of breeding, wintering, and migratory stopover habitat for birds in the Redevelopment Project area. (EIR Vol. III, pp. III.N-50–54.)

FINDING NO. 6:

THE AGREEMENT SATISFIES APPLICABLE REQUIREMENTS OF THE LAND AND WATER CONSERVATION FUND ACT OF 1965 (16 U.S.C. SEC. 4601–et seq.)

Support For Finding No. 6:

The federal Land and Water Conservation Fund Act of 1965, provides that property acquired or developed or improved with the assistance of the federally-created Land and Water Conservation Fund (LWCF) cannot be

“converted” to uses other than public outdoor recreation unless the conversion is approved by the Secretary of the Interior. The Secretary may approve a conversion if it is “in accord with the then existing comprehensive statewide outdoor recreation plan, and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.” (16 U.S.C. sec. 4601(f) (3).)

Approximately 35 acres of land within the existing CPSRA is subject to LWCF restrictions. (David Siegenthaler, Department of Interior letter to Barbara Baker, State Parks, dated March 29, 2010.) Of that 35 acre area, approximately 3.5 acres is proposed to be removed from the existing CPSRA and conveyed to the Agency by State Parks, including 0.64 acres of water pipeline, 0.20 acres of sewer line and 2.7+/- acres of land improved with a paved parking area and an adjacent grassy area. The proposed substitute or replacement property consists of 3.5+/- acres of land located directly adjacent to the existing CPSRA along Jamestown Avenue, and 0.8+/- acres of land located near Yosemite Slough. (Agreement, Exhibit A.) (BMS Design Group, Map of Proposed 6 (F) (3) Lands, August 24, 2010.)

State Parks is transmitting a formal application for conversion approval to the Department of Interior. The California Outdoor Recreation Plan (2008) is California’s comprehensive statewide outdoor recreation plan; the proposed conversion is consistent with that Plan. The proposed substitute or replacement property is of reasonably equivalent usefulness and location, as the property proposed to be removed from the existing CPSRA.

State Parks’ obligation to transfer the LWCF protected land to the Agency is expressly conditioned upon the approval of the Secretary of Interior. No conversion will take place under the Agreement until this approval has been obtained by the Secretary. (Agreement, section 13.4.)

Assuming approval of the Secretary of Interior, the LWCF protected lands will be conveyed to the Agency in phases of the Redevelopment Project. (Agreement, Exhibit D.) State Parks’ obligation to transfer the protected lands to the Agency is also contingent upon the Agency’s transfer of the Park Addition Parcels. (Agreement, sections 5.3, 13.1.)

FINDING NO. 7:

TWENTY PERCENT OF THE TOTAL CONSIDERATION VALUE PROVIDED BY THE AGREEMENT WILL BE PROVIDED IN THE FORM OF OPERATION AND MAINTENANCE FUNDING.

Support for Finding No. 7:

Section 4.1 of the Agreement obligates the Agency to provide \$10 million to State Parks for the exclusive purpose of a dedicated source of operation and maintenance of the reconfigured CPSRA, which is twenty (20) percent of the value of the \$50 million total consideration provided for in the Agreement. (Agreement, section 4.1.)

END

Public Comment

Interested members of the public may submit written or email comments on these draft findings. To be considered by the Director, the comments must be received no later than 5:00 p.m., Pacific Standard Time, October 4, 2010. Written comments should be addressed to:

William Herms
Chief Deputy Director, Acting, California Department of Parks and Recreation
1416 9th Street
Sacramento, CA 95418

Email comments should be sent to findings@parks.ca.gov.

**OAL REGULATORY
DETERMINATION**

DEPARTMENT OF SOCIAL SERVICES

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

**2010 OAL DETERMINATION NO. 17
(OAL FILE NO. CTU2010-0211-01)**

**REQUESTED BY: CHARLES THACKER
CONCERNING: DEPARTMENT OF SOCIAL SERVICES’ REQUIREMENT OF A CRIMINAL RECORD CLEARANCE FOR INDIVIDUALS EMPLOYED IN EACH CALIFORNIA CHILD CARE FACILITY**

**DETERMINATION ISSUED
PURSUANT TO GOVERNMENT CODE SECTION 11340.5.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Our review is limited to the sole issue of whether the challenged rule meets the definition of “regulation” as defined in Government Code section 11342.600, and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation” as defined in California Code of Regulations, title 1, section 250.¹ Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

CHALLENGED RULES

After reviewing the petition submitted by Charles Thacker (Petitioner) and the accompanying documentation, OAL accepted the petition for consideration on the following two issues:

1. Whether the Department of Social Services’ (Department) requirement that every employee of a child care facility have a criminal record clearance associated with each facility prior to the employee’s presence at each facility, is an underground regulation; and,
2. Whether the requirement that any employee who does not have a criminal record clearance associated with each facility must be discharged immediately, is an underground regulation.

The challenged rules are expressed in the Complaint Investigation Report, issued by the Department, and dated July 1, 2008.²

¹ As defined by California Code of Regulations, title 1, section 250(a), an

“[u]nderground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

² Petitioner and the Department refer to this document as the “citation.” Petitioner only provided page two of the report as an exhibit to his petition. A copy of that page is attached as Exhibit A to this Determination.

DETERMINATION

As to the first challenged rule, OAL determines that the Department’s requirement that every employee of a child care facility have a criminal record clearance associated with each facility prior to the employee’s presence at each facility is not an underground regulation because it falls within the “only legally tenable interpretation” exemption of Government Code section 11340.9(f).

With respect to the second challenged rule, whether an employee who does not have a criminal record clearance associated with each facility “must be discharged immediately,” the Department provided a certification³ pursuant to California Code of Regulations, title 1, section 280. The certification provides:

The Department will not issue, use, enforce or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule which requires the ‘immediate discharge’ (defined as a termination of employment rather than a temporary removal) of an employee who does not have a criminal record clearance associated to the licensed facility where the individual is presently employed.

Providing the certification as to non-enforcement of the alleged underground regulation requires OAL to suspend all action in connection with the challenged rule pursuant to California Code of Regulations, title 1, section 280(a)⁴. Accordingly, this Determination will relate solely to the first challenged rule.

FACTUAL BACKGROUND

On February 11, 2010, Petitioner submitted a petition to OAL pursuant to Government Code section 11340.5 challenging as underground regulations various provisions contained in, or related to, the citation issued by the Department to Petitioner as owner of Leap and Bound Academy (Exhibit A).

Petitioner owns a number of child care facilities and has many employees, some of whom work at multiple locations. The citation concerned failure to obtain criminal record clearance (or associate a criminal record

³ The certification is attached as Exhibit B to this Determination.

⁴ Section 280(a) provides:

Any action of OAL or an agency pursuant to this chapter in connection with a petition shall be suspended if OAL receives a certification from the agency that it will not issue, use, enforce, or attempt to enforce the alleged underground regulation along with proof that the certification has been served on the petitioner. This certification shall be made by the head of the agency or a person with a written delegation of authority from the head of the agency.

clearance from one facility to another)⁵ with respect to certain employees of Leap and Bound Academy prior to their presence in the facility. The employees had a California Clearance for *a specific* Leap and Bound facility, but were cited by the Department for not obtaining a new clearance for the additional facility or transferring the California Clearance previously obtained, to each additional facility prior to their presence in the facility. A California Clearance is defined in title 22, California Code of Regulations, section 101152(c):

“California Clearance” means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

Petitioner contends that California Code of Regulations, title 22, section 101170(e) “only requires that an individual be cleared but the EMBELLISHED 101170(e) [in the citation (Exhibit A)] requires them to be cleared AND associated.” (Emphasis in original.) In essence, Petitioner alleges that the Department has gone beyond the language contained in 101170(e) by requiring a clearance for *each* facility or to have transferred a current California Clearance to the new facility. Petitioner believes that the wording of California Code of Regulations, title 22, section 101170(e) allows individuals to *either* have a California Clearance associated with *any* facility, *or* request a transfer of a prior California Clearance to a new facility. He contends that once a California Clearance is obtained for one facility nothing further is required by the law. The Petitioner further argues that a reading of section 101170(e) provides an individual with a choice and that section 101170(e) does not mandate an individual to have a California Clearance associated to *each* facility where he or she is to be present.

The Department provided a response to the petition on June 7, 2010. Petitioner replied to the Department’s response, which was received on June 21, 2010, by OAL. OAL did not receive any public comments in response to this petition.

⁵ The Department uses the terms “associate” and “link” interchangeably with “transfer.” The Health and Safety Code and California Code of Regulations, title 22, section 101170, use the term “transfer” as the process by which a California Clearance is linked via the Department of Justice Live Scan reporting system from one facility to another. The Live Scan technology is a process by which an individual’s digitally scanned fingerprints are electronically submitted to the Department of Justice for comparison with fingerprints in the criminal history database. If no criminal conduct is related to the individual via the process, they are “cleared.”

UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (a), provides that:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5 it creates an underground regulation as defined in California Code of Regulations, title 1, section 250.

OAL may issue a determination as to whether or not an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of “regulation” as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA. An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

ANALYSIS

OAL’s authority to issue a determination extends only to the limited question of whether the challenged rule is a “regulation” subject to the APA. This analysis will determine whether the challenged rule is a “regulation” within the meaning of Government Code section 11342.600 and whether any exemption from the APA applies.

A regulation is defined in Government Code section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.)

has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342, subd. (g)).⁶

As stated in *Tidewater*, the first element used to identify a "regulation" is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.

The Department's rule challenged by Petitioner requires that all employees of child care facilities obtain a California Clearance for each facility or request a transfer of a current clearance prior to an employee's presence in each child care facility. Therefore, there is a clearly defined class of all those seeking to work in a licensed child care facility and the first element of *Tidewater* is met.

The second element used to identify a "regulation" as stated in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure. As stated above, the challenged rule is whether the Department's requirement that every employee of a child care facility have a California Clearance or request a transfer of a current California Clearance prior to the employee's presence at each facility is an underground regulation.

Health and Safety Code section 1596.871 provides:

The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety. **An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a child day care facility.**

(a)(1) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. [Emphasis added.]

Thus, Health and Safety Code section 1596.871 requires that an individual have a criminal record clearance or a criminal record exemption prior to being present in a child day care facility. Subdivision (h) of section 1596.871 goes on to provide for an *exception* from the foregoing requirement of a criminal record clearance or criminal record exemption. Subdivision (h) states:

For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred. [Emphasis added.]

The statutory scheme, therefore, sets forth the requirement for a criminal record clearance or a criminal record exemption prior to an individual being present in a child care facility. It further provides for an exception where the Department may permit an individual to transfer a current criminal record clearance. The Department adopted California Code of Regulations, title

⁶ Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

22, section 101170 to implement the exception in Health and Safety Code section 1596.871(h) and established the process and criteria for transferring a criminal record clearance. Section 101170 states:

101170. Criminal Record Clearance.

(a) The Department shall conduct a criminal record review of all persons specified in Health and Safety Code Section 1596.871(b). The Department has the authority to approve or deny a facility license, or employment, residence or presence in the facility, based on the results of this review.

. . .

(e) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1596.871 **shall prior to working, residing or volunteering in a licensed facility:**

(1) **Obtain a California clearance** or a criminal record exemption as required by the Department **or**

(2) **Request a transfer of a criminal record clearance as specified in Section 101170(f)** **or**

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 101170.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

(f) **A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another,** or from TrustLine to a state licensed facility by providing the following documents to the Department:

(1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).

(2) A copy of the individual's driver's license, or

(3) A valid identification card issued by the Department of Motor Vehicles, or

(4) A valid photo identification issued by another state or the United States government if the individual is not a California resident.

(5) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description). . . . [Emphasis added.]

The challenged rule requiring that every employee of a child care facility have a California Clearance for each facility or request a transfer of a current California Clearance prior to the employee's presence at each fa-

cility implements, interprets and makes specific Health and Safety Code section 1596.871 and California Code of Regulations, title 22, section 101170. It therefore meets the definition of a "regulation."

EXEMPTION

Generally, a rule that meets the definition of "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA.

Government Code section 11340.9(f) creates an exemption from APA requirements for a rule which consists of the only legally tenable interpretation of existing statutory and regulatory requirements. The "only legally tenable interpretation" exemption applies to a regulation that, although meeting the APA definition of a "regulation" in section 11342.600, represents the only interpretation that would allow an agency to carry out its authority or duties under the law governing its activity, and that does not otherwise further interpret, implement or make specific that law. The exemption is not limited to interpretation of a single provision of law, but may be an interpretation derived from multiple legal provisions in statutes, cases, and duly adopted regulations that govern the Department's activities, provided that the interpretation does not further interpret, implement or make specific those laws.

"A regulation that embodies the only legally tenable interpretation of a provision of law" is not subject to the requirements of the APA. (Government Code section 11340.9(f).) The California Supreme Court discussed the "only legally tenable interpretation" exception in *Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 328, 132 P.3d 249. The court stated:

. . . the exception for the lone "legally tenable" reading of the law applies only in situations where the law "can reasonably be read only one way" (1989 Off. Admin. Law Determination No. 15, Cal. Reg. Notice Register 89, No. 44-Z, pp. 3122, 3124), such that the agency's actions or decisions in applying the law are essentially rote, ministerial, or otherwise patently compelled by, or repetitive of, the statute's plain language. (See Cal. Law Revision Com. com., 32D West's Ann. Gov. Code (2005 ed.) foll. § 11340.9, p. 94; 1989 Off. Admin. Law Determination No. 15, Cal. Reg. Notice Register 89, No. 44-Z, pp. 3124-3131 [reviewing an agency interpretation of the law for compliance with the APA and concluding that although the agency had a "well-supported" rationale for its view, it was not the only legally tenable interpretation of the pertinent statute].)

Petitioner argues that the Department's interpretation of California Code of Regulations, title 22, section 101170 goes beyond the statutory and regulatory scheme found in Health and Safety Code section 1596.871 and California Code of Regulations, title 22, section 101170 by requiring a new criminal record clearance for each facility or the transfer of a current criminal record clearance when an employee is working at more than one facility and, therefore, is enforcing an underground regulation.

Petitioner contends that California Code of Regulations, title 22, section 101170(e) allows individuals to *either* have a California Clearance associated with any facility *or* request a transfer of a prior clearance (associate the new facility to the California Clearance). Petitioner further alleges that the Department's requirement that an employee who has obtained a California Clearance for one Leap and Bound facility must transfer the California Clearance to each additional Leap and Bound facility prior to the employee's presence in that additional facility goes beyond the language of section 101170(e), thereby creating an underground regulation.

As set forth in the Analysis portion above, Health and Safety Code section 1596.871 requires a criminal record clearance or a criminal record exemption for an individual prior to their initial appearance in each child care facility. However, section 1596.871(h) allows for an exception to this rule: the Department may permit an individual who already has a current criminal record clearance to transfer the current criminal record clearance to a new facility. California Code of Regulations, title 22, section 101170, implements Health and Safety Code section 1596.871, subdivision (h) by further articulating the requirement for a California Clearance and setting forth the process and criteria for transferring an existing California Clearance to a new facility. Health and Safety Code section 1596.871 read in conjunction with California Code of Regulations, title 22, section 101170, provides that the individual who already has a California Clearance must, prior to their presence at any facility, either 1) obtain a new California Clearance for each specific facility or, 2) request a transfer of their current California Clearance to that specific facility. The second option transfers the individual's clearance to the additional facility via the Department of Justice Live Scan screening system as was briefly discussed *supra*, at footnote five. The purpose, as was stated by the Department in their Final Statement of Reasons for adopting the regulatory scheme is described as follows:

It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested. [OAL file no. 2004-0709-02 C, FSOR p. 129.]

In the event that the Department of Justice notifies the Department that a "cleared" person had a subsequent arrest, the Department may be required to remove or exclude the individual from *each* of the facilities. The submission of a Live Scan fingerprint electronically "associates" the individual to a specific facility so that the Department knows where the individual might be working. If an individual subsequently works at another facility, the system would not account for that fact absent a new scan for that facility or a transfer of the already cleared scan through a state licensing facility.

Petitioner's contention is that the language of California Code of Regulations, title 22, section 101170(e) only requires an individual to obtain a California Clearance once prior to their presence in *all* facilities and that once they have obtained a California Clearance prior to their presence in the *first* facility, they have met their legal obligations as to all subsequent facilities. Such an interpretation of subsection (e) does not give full effect to subsection (f) or section 1596.871(h) of the Health and Safety Code. Subsection (f) provides for a licensee or applicant to "transfer" a criminal record clearance from one state licensed facility to another in lieu of obtaining a new California Clearance. It would be unnecessary to have subsection (f) if a licensee only needed to have an initial California Clearance and not have it transferred to other facilities where the person is also intending to be present. Subsection (f) would be without purpose if Petitioner's interpretation were correct. Further, Petitioner's interpretation ignores the plain language of Health and Safety Code section 1596.871(h) and California Code of Regulations, title 22, section 101170(e) that a California Clearance is required for each facility prior to working, residing or volunteering in a licensed child care facility.

For the reasons stated above, OAL finds that the Department's interpretation of California Code of Regulations, title 22, section 101170(e) to require *either* a California Clearance for *each* child care facility *or* the transfer of a previously obtained California Clearance from one facility to another prior to the individual's presence in the facility meets the definition of "regulation," however, falls within the only legally tenable interpretation exemption from the APA.

AGENCY RESPONSE

The Department contends that "it is not an underground regulation to require submission of a clearance transfer request prior to presence and to associate the person's name to the facility as the rule is contained in statute and regulation." As shown above, OAL agrees with this analysis.

PETITIONER REPLY

The Petitioner contends that the use of the word “or” in California Code of Regulations, title 22, section 101170(e) must be given its plain meaning, and therefore, the transfer is “optional.” He further contends that the Department’s use of “or” in the list of requirements in subsection (e) indicates that “a choice exists with respect to the listed mandatory actions and any ONE of the listed actions will suffice to comply with the mandatory action.” Therefore, “transfers are optional actions” and an individual “may choose ONE of the three possible actions to comply with the criminal background clearance requirements.” Based on its analysis of Health and Safety Code section 1596.871 and California Code of Regulations, title 22, section 101170, above, OAL does not agree with the Petitioner.

Although not relevant to this analysis, Petitioner also contends that “Form 9182 needs a fully promulgated regulation to implement the law under which this form is issued.” Form LIC 9182 (Rev. 4/02) is a Criminal Background Clearance Transfer Request. On July 14, 2003, OAL approved the Department’s submission of file number 2003–0702–03 E. Incorporated by reference into the OAL approved regulation was faun LIC 9182 (Rev. 4/02). OAL file number 2003–0702–03 E was reified on November 12, 2003 and March 11, 2004. On August 20, 2004, the Certificate of Compliance was filed with the Secretary of State. Therefore, LIC 9182 (Rev. 4/02) is a duly adopted form and all regulatory matter contained in the form has been approved by OAL as having met the substantive and procedural standards of the APA. (See Cal. Code Regs., tit. 1, sec. 20.)

CONCLUSION

In accordance with the above analysis, OAL determines that the Department’s requirement that every employee of a child care facility have a criminal record clearance associated with each facility prior to their presence at the facility is not an underground regulation because it falls within the “only legally tenable interpretation” exemption of Government Code section 11340.9(f).

As noted above, with respect to the second challenged rule, whether an employee who does not have a criminal record clearance associated with each facility “must be discharged immediately,” the Department provided a certification pursuant to California Code of Regulations, title 1, section 280. OAL has suspended all action on this challenged rule and makes no determination as to whether it is an underground regulation.

Date: August 23, 2010

/s/
SUSAN LAPSLEY
Director

/s/
Elizabeth A. Heidig
Staff Counsel

cc: Charles Thacker, Leap and Bound Academy
John Wagner, Director, DSS
Pat Baron, Senior Counsel

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653–7715. Please have the agency name and the date filed (see below) when making a request.

File# 2010–0714–01
BOARD FOR PROFESSIONAL ENGINEERS AND
LAND SURVEYORS
Reference Forms

The Board for Professional Engineers and Land Surveyors submitted this rulemaking action to amend Title 16, California Code of Regulations, sections 427.10 and 427.30. The amendments update three incorporated by reference forms that are required under these sections for submitting references to the board that verify the qualifying experience of applicants for licensure as a professional engineer or a professional land surveyor (section 427.10) or for authority to use the title structural engineer (section 427.30). An amendment to section 427.10 also adds an optional form that professional land surveyor candidates may use to log training to supplement the required reference form.

Title 16
California Code of Regulations
AMEND: 427.10, 427.30
Filed 08/25/2010
Effective 09/24/2010
Agency Contact: Larry Kereszt (916) 263–2240

File# 2010-0712-01
BOARD OF EDUCATION
 Statewide Benefit Charter Schools

In this regulatory action, the State Board of Education amends and adds to its regulations pertaining to "Statewide Benefit Charter Schools" which are authorized under Education Code section 47605.8. The primary purpose of this regulatory action is to clarify the process a statewide benefit charter school petitioner must follow to notify the county superintendent of schools of each county where the petitioner proposes to locate a school site and to notify the governing board of each school district where the petitioner proposes to locate a school site.

Title 5
 California Code of Regulations
 ADOPT: 11967.6.1 AMEND: 11967.6
 Filed 08/19/2010
 Effective 09/18/2010
 Agency Contact: Connie Diaz (916) 319-0584

File# 2010-0819-02
BOARD OF GOVERNORS, CALIFORNIA
COMMUNITY COLLEGES
 Implementation of the Fifty Percent Law

The adoption of section 59204.1, a supplemental definition of "serious hardship," was filed by the Board with the Secretary of State on 8/19/2010, and then submitted to OAL on 8/19/2010 for printing in title 5 of the California Code of Regulations. This regulatory action is exempt from the rulemaking requirements of the Administrative Procedure Act and OAL review pursuant to Education Code section 70901.5.

Title 5
 California Code of Regulations
 ADOPT: 59204.1
 Filed 08/19/2010
 Effective 09/18/2010
 Agency Contact: Jonathan Lee (916) 445-6272

File# 2010-0709-01
BOARD OF PHARMACY
 Dishonest Conduct on a Pharmacist Licensure Exam/Confidentiality

This action strengthens existing penalties for engaging in dishonest conduct during a pharmacist licensure examination by 1) increasing the period of time that an applicant for examination as a pharmacist is not approved to take the examination from one year to three years from the date of the incident, and 2) requiring sur-

render of any pharmacist intern license during that three year period of ineligibility.

Title 16
 California Code of Regulations
 AMEND: 1721, 1723.1
 Filed 08/18/2010
 Effective 09/17/2010
 Agency Contact: Carolyn Klein (916) 574-7913

File# 2010-0709-03
COMMISSION ON TEACHER CREDENTIALING
 Definitions and Terms Related to Application Forms

This regulatory action amends the definition of "Application for a credential" and adopts new application forms for issuance and renewal or reissuance of a credential, including the related Instruction and Information Sheet and the Personal and Professional Fitness Explanation Form. The Commission placed these new forms under the new definitions of "Application," "Application form," and "Application packet" with the instructions that these new forms are intended to replace the forms referenced in Division 8, Chapters 1 and 4 regardless of earlier revision dates.

Title 5
 California Code of Regulations
 AMEND: 80001
 Filed 08/20/2010
 Effective 09/19/2010
 Agency Contact:
 Tammy A. Duggan (916) 323-5354

File# 2010-0713-04
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
 Beer Labeling Requirements

This regulatory action updates beer container labeling requirements in order to make them consistent with new standards imposed by California statutes and federal regulations. The amendments remove outdated alcohol content requirements, define certain key terms, and specify when and how labels must be placed on containers. The amendments also prohibit beer from being sold or imported in this state unless a copy of the label has been filed with ABC, and provide that the Department may refuse to accept non-compliant labels.

Title 4
 California Code of Regulations
 AMEND: 130
 Filed 08/20/2010
 Effective 09/19/2010
 Agency Contact: Susie Smith (916) 928-6821

File# 2010-0713-03

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION****Use of Force**

This regulatory action implements remedial measures required by the federal court in *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH) to prevent the use of unnecessary and excessive force by prison guards against inmates. It also establishes guidelines for the use of force when it is necessary.

Title 15**California Code of Regulations**

ADOPT: 3268.3 AMEND: 3000, 3268, 3268.1, 3268.2

Filed 08/19/2010

Effective 08/19/2010

Agency Contact: Kelly Medina (916) 341-7390

File# 2010-0720-04

DEPARTMENT OF FOOD AND AGRICULTURE**Oriental Fruit Fly Interior Quarantine**

The Department of Food and Agriculture filed this timely certificate of compliance action to make permanent the amendment to title 3, California Code of Regulations, section 3423(b), adopted as an emergency in OAL File No. 2010-0427-02E. That amendment repealed the quarantine controls on host produce of the Oriental fruit fly, *Bactrocera dorsalis* sp., in approximately 84 square miles surrounding the La Verne area of Los Angeles and San Bernardino counties.

Title 3**California Code of Regulations**

AMEND: 3423(b)

Filed 08/19/2010

Agency Contact:

Stephen S. Brown (916) 654-1017

File# 2010-0720-05

DEPARTMENT OF FOOD AND AGRICULTURE**Oak Mortality Disease Control**

This Certificate of Compliance makes permanent the emergency regulatory action (OAL file no. 2010-0225-02E) that modified the existing oak mortality disease control regulation by adding ten new plants to the list of associated articles (nursery stock), *Choisya ternate*, *Cornus kousa*, *Daphniphyllum glaucescens*, *Ilex aquifolium*, *Lithocarpus glaber*, *Magnolia cavaleri*, *Magnolia foveolata*, *Ribes laurifolium*, *Vaccinium myrtillus* and *Vaccinium vitis-idaea* whose movements are regulated as hosts or potential carriers that may transfer the disease from an infested area.

Title 3**California Code of Regulations**

AMEND: 3700(c)

Filed 08/24/2010

Agency Contact:

Stephen S. Brown (916) 654-1017

File# 2010-0719-04

EMPLOYMENT DEVELOPMENT DEPARTMENT**Taxable Value of Meals and Lodging**

This regulatory action amends sections 926-3, 926-4, and 926-5 that establish the taxable value of meals and lodging furnished to employees by employers. In order to establish the equivalent amount of cash wages paid by employers who pay a portion of their employee's wages in the form of meals or lodging it is necessary to compute the reasonable cash value of such meals and lodging for unemployment insurance purposes. The Department makes this computation each calendar year to reflect the upward or downward trend in the cost of living during the previous calendar year. This yearly computation ensures an accurate and up-to-date calculation of the taxable values of meals and lodging for purposes of "wages" within the meaning of Unemployment Insurance Code section 926. Pursuant to Unemployment Insurance Code section 310, the Department established 1/1/2010 as the effective date of this regulatory action.

Title 22**California Code of Regulations**

AMEND: 926-3, 926-4, 926-5

Filed 08/23/2010

Effective 01/01/2010

Agency Contact: Estela Gallawa (916) 654-8410

File# 2010-0727-02

OCCUPATIONAL SAFETY AND HEALTH**STANDARDS BOARD****Cadmium**

This change without regulatory effect corrects a typographical error in an acronym used to refer to the National Institute for Occupational Safety and Health's Registry of Toxic Effects of Chemical Substances.

Title 8**California Code of Regulations**

AMEND: Appendix B following section 5207

Filed 08/25/2010

Agency Contact: Marley Hart (916) 274-5721

File# 2010-0713-02

OFFICE OF REAL ESTATE APPRAISERS**Amendments, Deletions and Additions**

The Office of Real Estate Appraisers made various amendments to sections 3525, 3527, 3541, 3542, 3544,

3561, 3563, 3566, 3568, 3569, 3570, 3583, 3602, 3603, 3661, 3722 and Article 15 of title 10 of the California Code of Regulations.

Title 10

California Code of Regulations

AMEND: 3525, 3527, 3541, 3542, 3543, 3544, 3561, 3563, 3566, 3568, 3569, 3570, 3583, 3602, 3603, 3661, 3722

Filed 08/24/2010

Effective 09/23/2010

Agency Contact:

Kathleen Chovan (916) 341-6126

File# 2010-0707-01

STATE PERSONNEL BOARD

Hearings and Appeals Regulations

This regulatory action establishes a comprehensive scheme of the legal processes for all hearings and appeals before the SPB in order to reflect current practice.

Title 2

California Code of Regulations

ADOPT: 51.3, 52.1, 52.2, 52.3, 52.5, 52.8, 52.10, 53.1, 53.2, 53.3, 53.4, 54.1, 55.1, 56.1, 56.2, 56.3, 56.4, 57.1, 57.2, 58.1, 58.2, 58.6, 58.7, 58.9, 58.10, 58.11, 59.2, 59.3, 59.4, 60.1, 63.1, 64.1, 64.2, 64.3, 64.4, 64.5, 64.6 AMEND: 51 (renumbered to 51.1), 51.1 (renumbered to 51.2), 51.2 (renumbered to 52.4), 52.3 (renumbered to 52.6), 51.9 (renumbered to 52.7), 51.5 (renumbered to 52.9), 52.6 (renumbered to 55.2), 52.2 (renumbered to 58.3), 51.4 (renumbered to 58.4), 52.1 (renumbered to 58.5), 57.2 (renumbered to 59.1), 52.5 (renumbered to 60.2), 57.3 (renumbered to 60.3), 53.1 (renumbered to 66.1), 56 (renumbered to 67.1), 56.1 (renumbered to 67.2), 56.2 (renumbered to 67.3), 56.3 (renumbered to 67.4), 56.4 (renumbered to 67.5), 56.5 (renumbered to 67.6), 56.6 (renumbered to 67.7), 56.7 (renumbered to 67.8) REPEAL: 51.3, 52, 52.4, 53, 53.2, 54, 54.2, 56.8, 57.1, 57.4, 60, 60.1, 60.2, 60.3, 60.4, 60.5, 60.6, 60.7, 60.8, 60.9, 60.10, 65, 547, 547.1

Filed 08/18/2010

Effective 08/18/2010

Agency Contact: John D. Smith (916) 651-1041

File# 2010-0719-02

SUPERINTENDENT OF PUBLIC INSTRUCTION

Child Care & Development Programs — Private Agencies; Open Board Meeting

The Superintendent of Public Instruction has repealed section 18015 of title 5 of the California Code of Regulations. This section makes the Brown Open Meetings Act (Gov. Code §§54950-54961) applicable

to private non-profit agencies operating with State contract funds. Section 18015 was authorized by Government Code §54951.7, which was repealed by Chapter 1138 of the Statutes of 1993 (SB1140). The Superintendent of Public Instruction states that this provision, for which all statutory authority has been repealed, has been deleted pursuant to section 100 of title 1 of the California Code of Regulations.

Title 5

California Code of Regulations

REPEAL: 18015

Filed 08/24/2010

Agency Contact: Connie Diaz (916) 319-0584

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN March 24, 2010 TO
August 25, 2010**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

08/18/10 ADOPT: 51.3, 52.1, 52.2, 52.3, 52.5, 52.8, 52.10, 53.1, 53.2, 53.3, 53.4, 54.1, 55.1, 56.1, 56.2, 56.3, 56.4, 57.1, 57.2, 58.1, 58.2, 58.6, 58.7, 58.9, 58.10, 58.11, 59.2, 59.3, 59.4, 60.1, 63.1, 64.1, 64.2, 64.3, 64.4, 64.5, 64.6 AMEND: 51 (renumbered to 51.1), 51.1 (renumbered to 51.2), 51.2 (renumbered to 52.4), 52.3 (renumbered to 52.6), 51.9 (renumbered to 52.7), 51.5 (renumbered to 52.9), 52.6 (renumbered to 55.2), 52.2 (renumbered to 58.3), 51.4 (renumbered to 58.4), 52.1 (renumbered to 58.5), 57.2 (renumbered to 59.1), 52.5 (renumbered to 60.2), 57.3 (renumbered to 60.3), 53.1 (renumbered to 66.1), 56 (renumbered to 67.1), 56.1 (renumbered to 67.2), 56.2 (renumbered to 67.3), 56.3 (renumbered to 67.4), 56.4 (renumbered to 67.5), 56.5 (renumbered to 67.6), 56.6 (renumbered to 67.7), 56.7 (renumbered to 67.8) REPEAL: 51.3, 52, 52.4, 53, 53.2, 54, 54.2, 56.8, 57.1, 57.4, 60, 60.1, 60.2, 60.3, 60.4, 60.5, 60.6, 60.7, 60.8, 60.9, 60.10, 65, 547, 547.1

08/13/10 AMEND: 18707

07/08/10 AMEND: 18313.5(c)
 07/06/10 AMEND: 51000
 07/01/10 AMEND: 1859.90.1
 06/24/10 ADOPT: 1859.90.1 AMEND: 1859.90.1
 renumbered as 1859.90.2, 1859.129,
 1859.197
 06/24/10 AMEND: 47000, 47001, 47002
 06/23/10 AMEND: 1859.184
 06/17/10 AMEND: 18703.3
 06/17/10 ADOPT: 18313.5
 06/09/10 AMEND: Div. 8, Ch. 64, Sec. 55300
 05/25/10 AMEND: div. 8, ch. 65, sec. 55400
 05/11/10 AMEND: 18945
 05/06/10 AMEND: 1859.2
 05/03/10 AMEND: 60040, 60045
 04/21/10 AMEND: 1859.96, 1859.148.2,
 1859.166.2
 04/08/10 AMEND: 1859.76

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08/24/10 AMEND: 3700(c)
 08/19/10 AMEND: 3423(b)
 08/17/10 AMEND: 3437
 08/16/10 AMEND: 3425(b) and (c)
 08/13/10 AMEND: 3591.15(a) and (b)
 08/11/10 AMEND: 3437
 08/05/10 AMEND: 3423(b)
 07/26/10 AMEND: 3435(c)
 07/20/10 AMEND: 3437
 07/16/10 AMEND: 3434(b) and (c)
 07/13/10 AMEND: 3591.20(a)
 07/07/10 ADOPT: 3591.24
 07/01/10 AMEND: 3437
 06/30/10 AMEND: 3423(b)
 06/18/10 AMEND: 6448, 6448.1, 6449, 6449.1,
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 06/10/10 ADOPT: 429, 430 AMEND: 441
 06/10/10 ADOPT: 3024.5, 3024.6, 3024.7, and
 3024.8 AMEND: 3024, 3024.1, 3024.2,
 3024.3, 3024.4, and 4603
 06/09/10 AMEND: 3434(b), (c), (d), and (e)
 06/07/10 AMEND: 4500
 06/02/10 AMEND: 3435
 06/01/10 AMEND: 3437(b)
 05/24/10 AMEND: 3434(b)
 05/17/10 AMEND: 3591.5(a)
 05/17/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3,
 3701.4, 3701.5, 3701.6, 3701.7, 3701.8
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 05/13/10 AMEND: 3437
 05/04/10 AMEND: 3423(b)
 05/04/10 AMEND: 3437(b)
 05/04/10 AMEND: 3434(b)
 05/03/10 AMEND: 3434(b), 3434(c) and 3434(d)

04/22/10 AMEND: 3434(b)
 04/22/10 AMEND: 3406(b), 3406(c)
 04/20/10 AMEND: 3437(b)
 04/15/10 AMEND: 3434(b)
 04/05/10 AMEND: 3434(b)
 03/24/10 ADOPT: 3436
 03/24/10 AMEND: 3588

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08/20/10 AMEND: 130
 08/16/10 AMEND: 1689
 07/29/10 ADOPT: 5170, 5180, 5181, 5182, 5183,
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 5267, 5268, 5269, 5270, 5275, 5280,
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 07/22/10 AMEND: 10300, 10302, 10305, 10310,
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 07/13/10 AMEND: 8034, 8035, 8042, 8043
 07/12/10 ADOPT: 5000, 5010, 5020, 5021, 5030,
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 5062, 5063, 5064, 5080, 5081, 5082,
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 5152, 5153, 5154, 5155, 5480, 5490,
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 06/21/10 AMEND: 8070, 8072, 8073, 8074
 06/09/10 AMEND: 1689.1
 06/01/10 AMEND: 10020
 05/17/10 ADOPT: 12590 REPEAL: 12590
 04/29/10 AMEND: 8034, 8035, 8042, 8043
 04/13/10 ADOPT: 12350, 12351, 12352, 12353,
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03/29/10	AMEND: 1685	
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03/25/10	AMEND: 10175, 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10185, 10187, 10188, 10190	
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08/24/10	REPEAL: 18015	
08/20/10	AMEND: 80001	
08/19/10	ADOPT: 59204.1	
08/19/10	ADOPT: 11967.6.1 AMEND: 11967.6	
08/09/10	ADOPT: 30010, 30011, 30012, 30013, 30014, 30015, 30016, 30017, 30018, 30019, 30034, 30035, 30036, 30037, 30038, 30039, 30040, 30041, 30042, 30043, 30044, 30045, 30046 AMEND: 30000, 30001, 30002, 30005, 30020, 30021, 30022, 30023, 30030, 30032, 30033	
08/02/10	ADOPT: 4700, 4701, 4702	
07/30/10	ADOPT: 70030, 70040, 71135, 71320, 71390, 71395, 71400.5, 71401, 71475, 71480, 71485, 71640, 71650, 71655, 71716, 71750, 71760, 74110, 74115, 76020, 76140, 76212, 76240 AMEND: 70000, 70010, 70020, 71100, 71110, 71120, 71130, 71140, 71150, 71160, 71170, 71180, 71190, 71200, 71210, 71220, 71230, 71240, 71250, 71260, 71270, 71280, 71290, 71300, 71310, 71340, 71380, 71400, 71405, 71450, 71455, 71460, 71465, 71470, 71500, 71550, 71600, 71630, 71700, 71705, 71710, 71715, 71720, 71730, 71735, 71740, 71745, 71770, 71810, 71850, 71865, 71920, 71930, 74000, 74002, 74004, 74006, 74120, 74130, 74140, 74150, 74160, 74170, 74190, 74200, 76000, 76120, 76130, 76200, 76210, 76215 REPEAL: 70030, 71000, 71005, 71010, 71020, 71330, 71360, 71410, 71415, 71420, 71490, 71495, 71505, 71510, 71515, 71520, 71555, 71560, 71565, 71605, 71610, 71615, 71650, 71655, 71725, 71775, 71800, 71805, 71830, 71855, 71860, 71870, 71875, 71880, 71885, 71890, 71900, 71905, 71910, 72000, 72005, 72010, 72020, 72101, 72105, 72110, 72120, 72130, 72140, 72150, 72160, 72170, 72180, 72190, 72200, 72210, 72220, 72230, 72240, 72250, 72260, 72270, 72280,	
07/23/10	AMEND: 19816, 19816.1	
06/09/10	AMEND: 19824, 19851, 19854	
05/27/10	ADOPT: 80048.8, 80048.8.1, 80048.9, 80048.9.1, 80048.9.2, 80048.9.3 AMEND: 800.46.5, 80047, 80047.1, 80047.2, 80047.3, 80047.4, 80047.5, 80047.6, 80047.7, 80047.8, 80047.9, 80048.3, 80048.4, 80048.6 REPEAL: 80048.2	
05/20/10	ADOPT: 30730, 30731, 30732, 30733, 30734, 30735, 30736	
04/15/10	AMEND: 19816, 19816.1	
04/12/10	REPEAL: 40503	
04/12/10	AMEND: 42002	
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06/21/10	AMEND: 202 REPEAL: 212	
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08/25/10	AMEND: Appendix B following section 5207	

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08/09/10	AMEND: 9767.3, 9767.6, 9767.8, 9767.12, 9767.16, 9880, 9881, 9881.1, 10139	07/12/10	AMEND: 2698.600, 2698.602
08/03/10	AMEND: 3563, 3651	07/01/10	AMEND: 2699.200, 2699.201
07/22/10	AMEND: 5278	06/29/10	ADOPT: 2756, 2758.1, 2758.2, 2758.3, 2758.4, 2758.5, 2758.6, 2758.7, 2945.1, 2945.2, 2945.3, 2945.4 AMEND: 2750, 2911
07/13/10	AMEND: 9789.70	06/24/10	AMEND: 2699.6500, 2699.6700, 2699.6707, 2699.6721
07/01/10	AMEND: 4650, 4797, 4823	06/09/10	AMEND: 2699.6600, 2699.6607, 2699.6619, 2699.6621, 2699.6705, 2699.6715, 2699.6725
06/30/10	AMEND: 10232.1, 10232.2, 10250.1	06/01/10	AMEND: 2498.6
06/30/10	ADOPT: 17300	05/26/10	AMEND: 2699.6809
06/29/10	ADOPT: 16450, 16451, 16452, 16453, 16454, 16455, 16460, 16461, 16462, 16463, 16464 AMEND: 16421, 16423, 16427, 16428, 16431, 16433, 16500	05/19/10	ADOPT: 5500, 5501, 5502, 5503, 5504, 5505, 5506, 5507
06/21/10	AMEND: 344.30	05/04/10	AMEND: 2699.6625
06/02/10	AMEND: 1590	04/28/10	AMEND: 2318.6
05/25/10	AMEND: 1599	04/28/10	AMEND: 2318.6, 2353.1, 2354
05/05/10	AMEND: 3308	04/28/10	AMEND: 2353.1
04/06/10	AMEND: 2305.2, 2340.16, 2360.3, 2405.4, 2534.8	04/21/10	AMEND: 2699.202
03/24/10	AMEND: 4301	04/21/10	AMEND: 2699.202
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08/09/10	ADOPT: 4100, 4105, 4210, 4300, 4310, 4315, 4320, 4325, 4330, 4415, 4420	04/12/10	AMEND: 2690
07/07/10	ADOPT: 1850.350(a), 1850.350(b), 1850.350(c) AMEND: 1810.203.5(d)	04/06/10	ADOPT: 2850.1, 2850.2, 2850.3, 2850.4, 2850.5, 2850.6, 2850.7, 2850.8, 2850.9, 2850.10
07/07/10	ADOPT: 1850.350(a), 1850.350(b), 1850.350(c) AMEND: 1810.203.5(d)	04/01/10	ADOPT: 1409.1, 1414, 1422.4, 1422.4.1, 1422.5, 1422.6, 1422.6.1, 1422.6.2, 1422.6.3, 1422.7, 1422.7.1, 1422.9, 1422.10, 1422.11, 1422.12, 1424, 1437, 1950.122.2.1, 1950.122.4, 1950.122.4.1, 1950.122, 1950.122.5, 1950.122.5.1, 1950.122.5.2, 1950.122.5.3, 1950.122.5.4, 1950.122.6, 1950.122.7, 1950.122.8, 1950.122.9, 1950.122.10, 1950.122.11, 1950.122.12, 1950.205.1, 1950.209, 1950.307 AMEND: 1404, 1409, 1411, 1430.5, 1431, 1433, 1436, 1454, 1550, 1552, 1557, 1950.003, 1950.122.2, 1950.123, 1950.204.3, 1950.204.4, 1950.301, 1950.314.8, 1950.316, 1950.317 REPEAL: 1950.122
05/07/10	REPEAL: 3520	03/29/10	AMEND: 2202, 2203
04/28/10	ADOPT: 4350	Title 11	
04/20/10	ADOPT: 10700, 10701 AMEND: 10518, 10529 REPEAL: 10532, 10533	06/09/10	AMEND: 1005, 1018
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08/24/10	AMEND: 3525, 3527, 3541, 3542, 3543, 3544, 3561, 3563, 3566, 3568, 3569, 3570, 3583, 3602, 3603, 3661, 3722	05/19/10	AMEND: 20
08/05/10	AMEND: 2646.6	04/21/10	AMEND: 1084
07/30/10	AMEND: 2699.6700		
07/29/10	ADOPT: 2548.1, 2548.2, 2548.3, 2548.4, 2548.5, 2548.6, 2548.7, 2548.8, 2548.9, 2548.10, 2548.11, 2548.12, 2548.13, 2548.14, 2548.15, 2548.16, 2548.17, 2548.18, 2548.19, 2548.20, 2548.21, 2548.22, 2548.23, 2548.24, 2548.25, 2548.26, 2548.27, 2548.28, 2548.29, 2548.30, 2548.31 REPEAL: 2548.1, 2548.2, 2548.3, 2548.4, 2548.5, 2548.6, 2548.7, 2548.8		
07/21/10	ADOPT: 3575, 3576, 3577 AMEND: 3500, 3522, 3523, 3524, 3526, 3527, 3528, 3529, 3530, 3582, 3681, 3702, 3703, 3721, 3724, 3726, 3728, 3731, 3741		

03/30/10	AMEND: 1084	Title 15	
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08/12/10	ADOPT: 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630	08/13/10	ADOPT: 3540, 3541, 3542, 3543, 3544, 3545, 3546, 3547, 3548, 3560, 3561, 3562, 3563, 3564, 3565
07/29/10	REPEAL: 171.04	08/11/10	AMEND: 3350.2, 3352.2, 3356, 3358, 3390
07/23/10	ADOPT: 126.00, 126.02, 126.04, 127.00, 127.02, 127.04, 127.06, 127.08, 127.10 AMEND: 125.00, 125.02, 125.12, 125.16, 125.18, 125.20, 125.22	08/05/10	REPEAL: 3999.3
07/16/10	AMEND: 2449, 2449.1, 2449.2	08/05/10	REPEAL: 3999.4
07/08/10	AMEND: 1141(b)	08/05/10	REPEAL: 3999.5
06/14/10	AMEND: 440.04	08/04/10	ADOPT: 3042 AMEND: 3040, 3040.1, 3041, 3041.2, 3043, 3043.1, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045, 3045.1, 3045.2, 3045.3 REPEAL: 3040.2
06/14/10	AMEND: 345.24, 345.40, 345.41, 345.46, 345.50 REPEAL: 345.42	07/30/10	ADOPT: 3349.1.1, 3349.1.2, 3349.1.3, 3349.1.4, 3349.2.1, 3349.2.2, 3349.2.3, 3349.2.4, 3349.3, 3349.3.1, 3349.3.2, 3349.3.3, 3349.3.4, 3349.3.5, 3349.3.6, 3349.3.7, 3349.4.1, 3349.4.2, 3349.4.3, 3349.4.4, 3349.4.5, 3349.4.6 AMEND: 3349
06/07/10	AMEND: 152.00, 190.03	07/27/10	REPEAL: 3999.2
05/18/10	ADOPT: 1971.5 AMEND: 1968.2, 1971.1	07/22/10	ADOPT: 3768, 3768.1, 3768.2, 3768.3 REPEAL: 3999.6
04/27/10	AMEND: 1160.3, 1160.4	07/13/10	ADOPT: 3505 AMEND: 3000, 3075.2, 3075.3, 3502, 3504
04/13/10	AMEND: 1201, 1212, 1213	07/02/10	ADOPT: 8000, 8001, 8002
04/05/10	ADOPT: 2408.1 AMEND: 2401, 2403, 2404, 2405, 2406, 2408, 2409	05/25/10	AMEND: 3170.1(g), 3173.2(d)
04/01/10	AMEND: 1961, 1961.1	05/25/10	AMEND: 3090, 3091, 3093, 3095
04/01/10	AMEND: 1961, 1961.1	04/26/10	ADOPT: 3720, 3721, 3721.1, 3722, 3723
03/25/10	AMEND: 2480	Title 16	
Title 14		08/25/10	AMEND: 427.10, 427.30
08/16/10	AMEND: 918, 938, 958	08/18/10	AMEND: 1721, 1723.1
08/12/10	AMEND: 6550.5	08/12/10	AMEND: 2537, 2590
08/11/10	AMEND: 895.1, 916.9, 936.9, 956.9, 923.9, 943.9, 963.9 REPEAL: 916.9.1, 936.9.1, 916.9.2, 936.9.2, 923.9.2, 943.9.2	07/30/10	ADOPT: 3394.7 AMEND: 3394.1, 3394.4, 3394.5, 3394.6
07/20/10	AMEND: 670.5	07/21/10	REPEAL: 1569
07/19/10	AMEND: 632	07/21/10	ADOPT: 2262.1 AMEND: 2262, 2276
07/12/10	AMEND: 7.50	07/09/10	AMEND: 3000, 3003, 3005, 3065 REPEAL: 3006
06/24/10	AMEND: 360, 361, 362, 363, 364, 555, 708, 713	07/09/10	AMEND: 411
06/23/10	AMEND: 919.9, 939.9	07/09/10	AMEND: 3340.42
05/26/10	AMEND: 7.50	07/07/10	AMEND: 3028, 3061
05/03/10	AMEND: 820.01	06/30/10	AMEND: 1355.4
04/30/10	AMEND: 27.80	06/21/10	ADOPT: 1525, 1525.1, 1525.2
04/27/10	AMEND: 632	06/18/10	ADOPT: 39, 40, 41, 42, 43, 44, 45, 46, 48, 48.1, 48.2, 48.3, 48.5, 48.6
04/20/10	AMEND: 895.1, 914.6, 934.6, 954.6, 1024, 1025, 1026, 1030, 1052, 1052.1, 1052.4, 1092, 1092.01, 1092.09, 1092.29	06/07/10	ADOPT: 1702
03/29/10	ADOPT: 18452.1 AMEND: 18449, 18450, 18451, 18453, 18453.2, 18454, 18455, 18456, 18456.1, 18456.2, 18456.3, 18456.4, 18457, 18459, 18459.1, 18459.1.2, 18459.2.1, 18459.3, 18460.1, 18460.1.1, 18460.2, 18461, 18462, 18463, 18464, 18466, 18831 REPEAL: 18456.2.1, 18460.2.1	06/03/10	AMEND: 4180
		05/27/10	AMEND: 314
		05/20/10	AMEND: 1996.3, 1997

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05/19/10	AMEND: 3340.1	19-2530, 19-2540, 19-2703, 19-2705,
05/13/10	ADOPT: 1399.615, 1399.616, 1399.617, 1399.618, 1399.619 AMEND: 1399.571	19-2724, 19-2731
05/04/10	ADOPT: 4175	Title 20
04/27/10	AMEND: 1399.152, 1399.153.3, 1399.160.3, 1399.160.4	07/08/10 AMEND: 2401, 2402, Appendix, Subdivisions (a) and (b)
04/12/10	ADOPT: 3340.36.1	Title 21
03/29/10	ADOPT: 1355.4	06/02/10 AMEND: 1411.1, 1411.7
Title 17		Title 22
06/29/10	AMEND: 100070, 100090	08/23/10 AMEND: 926-3, 926-4, 926-5
06/17/10	ADOPT: 95460, 95461, 95462, 95463, 95464, 95465, 95466, 95467, 95468, 95469, 95470, 95471, 95472, 95473, 95474, 95475, 95476, Appendix 1	08/02/10 ADOPT: 119900
06/17/10	ADOPT: 95200, 95201, 95202, 95203, 95204, 95205, 95206, 95207 AMEND: 95104	07/26/10 REPEAL: 97300.1, 97300.3, 97300.5, 97300.7, 97300.9, 97300.11, 97300.13, 97300.15, 97300.17, 97300.19, 97300.21, 97300.23, 97300.25, 97300.27, 97300.29, 97300.31, 97300.33, 97300.35, 97300.37, 97300.39, 97300.41, 97300.43, 97300.45, 97300.47, 97300.49, 97300.51, 97300.53, 97300.55, 97300.57, 97300.59, 97300.61, 97300.63, 97300.65, 97300.67, 97300.69, 97300.71, 97300.73, 97300.75, 97300.77, 97300.79, 97300.81, 97300.83, 97300.85, 97300.87, 97300.89, 97300.91, 97300.93, 97300.95, 97300.97, 97300.99, 97300.103, 97300.105, 97300.107, 97300.109, 97300.111, 97300.113, 97300.115, 97300.117, 97300.119, 97300.121, 97300.123, 97300.125, 97300.127, 97300.129, 97300.131, 97300.133, 97300.135, 97300.137, 97300.139, 97300.141, 97300.143, 97300.145, 97300.147, 97300.149, 97300.151, 97300.153, 97300.155, 97300.157, 97300.159, 97300.161, 97300.163, 97300.165, 97300.167, 97300.169, 97300.171, 97300.173, 97300.175, 97300.177, 97300.179, 97300.181, 97300.183, 97300.185, 97300.187, 97300.189, 97300.191, 97300.193, 97300.195, 97300.197, 97300.199, 97300.203, 97300.205, 97300.207, 97300.209, 97300.211, 97300.213, 97300.215, 97300.217, 97300.219, 97300.221, 7300.223, 97300.225, 97300.227, 97300.229, 97300.231, 97320.1, 97320.3, 97320.5, 97320.7, 97320.9, 97320.11, 97320.13, 97320.15, 97320.17, 97320.19, 97320.21, 97320.23, 97320.25, 97320.27, 97320.29, 97320.31, 97321.1, 97321.3, 97321.5, 97321.7, 97321.11, 97321.13,
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06/17/10	AMEND: 25136	
05/18/10	ADOPT: 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903	
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97342.1, 97343.3, 97343.5, 97343.7,	05/25/10	AMEND: 66262.44		
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97345.3, 97350.1, 97350.3, 97350.5,	05/18/10	ADOPT: 100102.1, 100103.1, 100103.2,		
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	100344, 100345, 100346, 100346.1,		2 Form CalRecycle 114 AMEND: 20164,
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